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15
 16 **IN THE UNITED STATES DISTRICT COURT**
IN AND FOR THE DISTRICT OF NEVADA

17 **MARCUS & MILLICHAP REAL ESTATE**
 18 **INVESTMENT SERVICES, INC., MARCUS &**
 19 **MILLICHAP REAL ESTATE INVESTMENT**
 20 **SERVICES OF NEVADA, INC., PERRY WHITE,**
 and GORDON ALLRED,

21 Plaintiffs,

22 v.

23 **DEVIN REISS, LEE K. BARRETT, NEIL**
SCHWARTZ, NORMA JEAN OPATIK, WAYNE
 24 **CAPURRO, RICHARD "DICK" JOHNSON, JAN**
HOLLE, the NEVADA REAL ESTATE
 25 **COMMISSION, the NEVADA REAL ESTATE**
DIVISION, and JOHN or JANE DOES 1-10,

26 Defendants.

Case No.:

COMPLAINT FOR:

1. Violation of Federal Antitrust Laws
2. Violation of Nevada Antitrust Laws
3. RICO
4. 42 U.S.C. § 1983
5. Abuse of Process
6. Conspiracy
7. Deceptive Trade Practices
8. Interference with Business Relations
9. Declaratory Judgment

AND JURY DEMAND

27
 28 ¹ For purposes of identification only.

1 Plaintiffs, Marcus & Millichap Real Estate Investment Services, Inc. (“**M&M**”) and
 2 Marcus & Millichap Real Estate Investment Services of Nevada, Inc. (“**M&M of Nevada**”)
 3 (collectively the entity Plaintiffs are referred to herein as “**Marcus**”), Perry White (“**White**”), and
 4 Gordon Allred (“**Allred**”) (collectively, the individual Plaintiffs are referred to herein as the
 5 “**Marcus Brokers**”) (collectively all Plaintiffs are referred to herein as “**Marcus & Millichap**”),
 6 hereby complain against the Defendants Lee K. Barrett, a broker² competing with Marcus &
 7 Millichap associated with Barret & Co, Inc (“**Barrett**”), Neil Schwartz, a broker competing with
 8 Marcus & Millichap associated with Coldwell Banker Premier Realty (“**Schwartz**”), Devin Reiss,
 9 a broker competing with Marcus & Millichap associated with Coldwell Banker Premier Realty
 10 (“**Reiss**”), Norma Jean Opatik, a broker competing with Marcus & Millichap associated with
 11 Realty Executives (“**Opatik**”), Wayne Capurro, a broker competing with Marcus & Millichap
 12 associated with Capurro & Reid Real Estate (“**Capurro**”) (collectively Barrett, Schwartz, Reiss,
 13 Opatik, and Capurro are referred to herein as the “**NREC Defendants**”), Richard “Dick”
 14 Johnson, a broker competing with Marcus & Millichap associated with the Johnson Group
 15 (“**Former NREC President**”), Jan Holle, a former broker who competed with Marcus &
 16 Millichap and is now Chief Investigator of the NRED (“**NRED Chief Investigator**”).

17 The individual Defendants, Barrett, Schwartz, Reiss, Opatik, Capurro, the Former NREC
 18 President Defendant Johnson, and the NRED Chief Investigator Defendant Holle, are each being
 19 sued individually, jointly, and severally, for their violations of federal and state antitrust laws, the
 20 Racketeer Influenced and Corrupt Organizations Act (“**RICO**”), violations of 42 U.S.C. § 1983
 21 (“**Section 1983**”), abuse of process, conspiracy, deceptive trade practices, interference with
 22 business relations, and declaratory judgment. Marcus & Millichap is pursuing actual damages,
 23 consequential damages, punitive damages, pre- and post-judgment interest, and equitable relief
 24 including injunctions, disgorgement, and reorganization, from and against each and all of these
 25 individual Defendants.

26 ² For brevity’s sake, we refer only to “brokers” in this Complaint, but each such reference should
 27 be read as inclusive of real estate brokers, agents, and salespersons, as the case may be. The
 28 individual Plaintiffs in this case are each brokers, agents, or salespersons associated with the
 Marcus, or their affiliates, at times relevant hereto. Marcus, and their affiliates, are also affiliated
 with numerous other brokers who are also included in the references to “Brokers” generally.

1 Marcus & Millichap hereby also complains, for purposes of relief only, against the
2 Nevada Real Estate Commission, a Commission of the State of Nevada comprised of brokers
3 actively competing against Marcus & Millichap who target, investigate, and discipline Marcus &
4 Millichap (“NREC”), and the Nevada Real Estate Division, an agency of the State of Nevada
5 responsible for oversight of the NREC (“NRED”).

6 Finally, Marcus & Millichap hereby also complains against **John and Jane Does 1-10**,
7 whose identities are not yet known to Marcus & Millichap at this time but who shall be named
8 hereafter as their identities are later discovered.

9 For causes of action against the foregoing Defendants, Marcus & Millichap alleges as
10 follows:

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Lewis Roca
ROTHGERBER CHRISTIE

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STATEMENT ON JURISDICTION AND VENUE

1
2 1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1331, as the
3 Defendants conspired, agreed, and took action to monopolize the Nevada real estate market by
4 unlawfully enacting and enforcing regulations to exclude out-of-state real estate professionals as
5 part of an unlawful scheme to stifle competition and thwart interstate commerce, in violation of
6 federal laws including but not limited to the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, the
7 Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* (“RICO”), and 42
8 U.S.C. § 1983 (“Section 1983”). The state or common law claims asserted in this action arise out
9 of the same transactions and occurrences as the federal law claims. The facts supporting this
10 federal question jurisdiction are specified in more detail throughout this Complaint, and include
11 but are not limited to the Defendants acting in concert in connection with their roles with the
12 NRED and NREC to restrict interstate commerce and fair competition by out-of-state brokers
13 involving the purchase and sale of real estate in the State of Nevada.

14 2. Venue is proper in this Court, as many of the transactions and occurrences at issue
15 in this matter took place in Clark County, Nevada and harm to the Plaintiffs occurred in Clark
16 County, Nevada.

BACKGROUND AND INTRODUCTION

17
18 3. In or around 2014, members of the NREC, including at that time Former NREC
19 President Johnson, and Defendant Holle, the Chief Investigator for the NRED, determined that
20 the then-current state regulations did not sufficiently ensure a monopoly over the Nevada real
21 estate brokerage industry for in-state resident Nevada-licensed brokers to the detriment and
22 contrary to the federally-protected rights of out-of-state brokers.

23 4. Driven by the desire to keep real estate commissions in the hands of in-state
24 brokers like themselves, and out of the hands of others, the members of the NREC, all of whom
25 were in-state brokers, collaborated and conspired with the NRED Chief Investigator to amend the
26 regulations, to—as the NRED Chief Investigator put it—prevent out-of-state brokers from
27 “taking business away from our Nevada licensees,” which of course included the Defendants.
28

1 5. “[W]e want to prohibit . . . out of state licensees listing Nevada property for
2 Nevada property owners whether the property owners are residents of Nevada or not,” noted the
3 NRED Chief Investigator.

4 6. “Also,” the NRED Chief Investigator continued, “we do not want out of state
5 licensees to represent Nevada residents in the purchase of Nevada real estate for the same reason”
6 (that is to say, because they are “taking business away from our Nevada licensees”).

7 7. The NRED Chief Investigator exceeded any scope of his employment with the
8 NRED when he conspired with the NREC Defendants to take actions to unlawfully prevent out-
9 of-state brokers from doing business in Nevada.

10 8. Without any public complaint or harm, and for no public benefit, the members of
11 the NREC, in collaboration with the NRED Chief Investigator, then amended Nevada
12 Administrative Code § 645.185 (i) to prohibit any out-of-state broker from representing any seller
13 of any Nevada real estate, (ii) to prohibit any out-of-state broker from representing any buyer of
14 any Nevada real estate if the buyer is a Nevada resident, and (iii) to only allow out-of-state
15 brokers to represent buyers of Nevada real estate if, and only if, the buyer is not a resident of
16 Nevada and the out-of-state broker associates (and, thus, has to share commissions) with a local
17 resident Nevada-licensed broker.

18 9. The amendments to Nevada Administrative Code § 645.185 were enacted as a
19 result of a conspiracy between members of the NREC, including Former NREC President
20 Johnson and some or all of the NREC Defendants, and NRED Chief Investigator Holle, for the
21 unlawful purpose of ensuring that in-state Nevada-licensed brokers receive commissions on every
22 brokered real estate transaction in the state, and to unlawfully exclude out-of-state brokers from
23 doing business in the state in all but the most limited circumstances, in a concerted, unlawful
24 effort to stifle interstate commerce and thwart fair competition in their market.

25 10. The amendments to Nevada Administrative Code § 645.185 were illegally enacted
26 without any of the requisite procedural safeguards, such as notice to the public or opportunities
27 for public comments, in violation of Nevada’s Administrative Procedures Act.
28

11. The amended regulation is so totally and unreasonably restrictive of interstate commerce and fair competition that it violates the Commerce Clause of the U.S. Constitution and federal antitrust laws.

12. In or around March 2016, Former NREC President Johnson (who was President of the NREC at the time) conducted his own research and investigations into potential violations of the illegally enacted amendments, without receiving any complaint from any member of the general public prompting him to do so. Former NREC President Johnson hoped to determine the extent to which in-state Nevada real estate brokers were losing business to out-of-state brokers. He concluded, "It appears that over \$200,000,000 of sales (\$5,000,000 in commissions) is not going to Nevada at this time just in the Retail listing; Much larger when annualized."

13. Former NREC President Johnson continued, "On top of this, with the other segments included there was a total of 3,129 listings, using the same parameters. [sic] Thus 12% equals 375 non licensed listings which extrapolates [sic] to over \$1.4 billion of listings at any one time (annualized it probably [sic] 2 to 3 times this)."

14. Former NREC President Johnson communicated these conclusions to NRED Chief Investigator Holle and to the other NREC Defendants.

15. Shortly thereafter, the NRED Chief Investigator, the NREC Defendants, and the Former NREC President, began investigating, prosecuting, and disciplining Marcus Brokers for purportedly violating the unlawful regulations enacted by the NREC, all without any complaint ever having been filed against these Brokers by any member of the general public.

16. The Defendants have targeted Marcus & Millichap and other Marcus Brokers, bringing more than thirty (30) charges of violations of the Defendants' unlawful scheme, with the sole purpose of thwarting interstate commerce and stifling fair competition in the real estate industry.

17. The Defendants adjudicated and participated in sham administrative proceedings against Marcus Brokers, including Marcus & Millichap, in which the Defendants among other things (i) allowed criminal charges to be prosecuted despite exclusive jurisdiction lying in the district courts of the State of Nevada, (ii) denied Marcus & Millichap and other Marcus Brokers

1 due process of law by denying opportunities to present witnesses in their behalf, denying
2 discovery, denying the right to confront their accusers, and denying the right to have their charges
3 adjudicated by fair and impartial tribunals, and (iii) made findings and imposed fines and
4 penalties not supported by the evidence, and often in direct contravention to the only evidence in
5 the record, and contrary to what is permitted by the applicable statute.

6 18. Defendants engaged in the foregoing conduct, more particularly described below,
7 with the intent to stifle interstate commerce and thwart fair competition, for their own personal
8 and financial benefits and the benefit of all other in-state Nevada-licensed brokers.

9 19. The Defendants have made their intentions to protect in-state brokers at the
10 expense of interstate commerce and fair competition abundantly clear.

11 a. Defendant Opatik stated she believes in-state Nevada-licensed brokers have the
12 expertise that is beneficial to “all of the people that would like to come in and work
13 and build our fair state,” and she stated that to suggest that in-state brokers don’t have
14 the same expertise as out-of-state brokers “is arrogant.”

15 b. Defendant Opatik later reconfirmed her beliefs, stating, “I know that within our
16 own community, real estate community, we have many experts in our commercial
17 world, in all of the state of Nevada. I don’t believe that we have to go outside the state
18 to get the only qualified expert to handle anybody’s commercial transaction.”

19 c. Defendant Schwartz similarly stated, “the fact of the matter is this state has
20 every expert that anybody needs to do any kind of business in. This state has people
21 who have been here and spent their lives here building this state and building the
22 commercial industry. I don’t think you can find anything in any other state that hasn’t
23 been accomplished here by our local brokers and real estate agents.”

24 d. Defendant Capurro stated he appreciates the Attorney General’s office
25 prosecuting charges against out-of-state brokers “because [the Attorneys General are]
26 trying to protect our industry.”

27 e. Defendant Capurro later stated also, “I know you are going to take this to the
28 state court, federal court, wherever, but I hope you don’t prevail. I hope you don’t

1 overturn our procedure, which you call a scheme, because I think it does serve the best
2 interests of Nevadans, and it serves the best interests of our industry, in that it keeps us
3 on the straight and narrow.”

4 f. Defendant Holle explained he helped draft the amended cooperative certificate
5 regulation because the Defendants don’t want out of state brokers taking away
6 business from in-state Nevada licensees.

7 20. With these intentions in mind, the Defendants created an illegal scheme by which
8 they abused the powers and authorities of their offices to:

9 a. Illegally concoct state regulations to financially benefit themselves and other
10 in-state Nevada-licensed brokers,

11 b. Arbitrarily, and without complaint from any member of the public, select
12 Marcus Brokers to punish for allegedly violating the unlawful regulations,

13 c. Investigate Marcus Brokers who became targets of Defendants’ illegal scheme,

14 d. Hold sham disciplinary hearings in which the Defendants denied the victim
15 Brokers constitutional rights to trial by jury for criminal charges brought before the
16 NREC over which the NREC has no jurisdiction, denied the victim Brokers due
17 process by denying Brokers rights to discovery and rights to call witnesses on their
18 behalf, by making findings and conclusions unsupported by evidence, and by
19 misrepresenting facts and evidence in order to achieve the results the Defendants
20 desired, and

21 e. Impose and enforce unconstitutional disciplinary actions, including fines and
22 other penalties, in their combined unlawful effort to stifle interstate commerce and
23 thwart fair competition in their market.

24 21. The methods used by the Defendants to exclude out-of-state brokers from the
25 Nevada real estate market are complex, broad sweeping, and extensive, but the motivation behind
26 the entire scheme is, simply, greed. Excluding out-of-state brokers from the market means more
27 business for in-state brokers such as the individual Defendants and less competition means those
28 in-state brokers can charge more for their services.

22. The Defendants have mis-used their offices and exceeded their authority for their own, individual, and private financial gain and interests to the significant harm of Marcus & Millichap and other Marcus Brokers, as well as to the significant harm of consumers and the interests of fair competition and interstate commerce.

PARTIES

23. M&M is one of the nation's premier commercial real estate investment brokerage firms with more than 80 offices throughout the United States and Canada, more than 1,800 investment sales and financial professionals, and closing more transactions annually than any other commercial real estate investment firm. M&M of Nevada is a subsidiary of M&M. M&M does business in Nevada by and through M&M of Nevada. The actions by the Defendants alleged in this complaint have been taken against both entities. The entities' interests in this action are aligned, such that they are both collectively referred to as Marcus herein.

a. As a leader in its real estate market, Marcus has found itself in the cross-hairs of the Defendants' illegal regulatory and disciplinary scheme.³

b. Marcus Brokers have now faced more than thirty (30) investigations and/or sham disciplinary proceedings under the Defendants' unlawful regulatory and disciplinary scheme, have been fined in excess of seven hundred thousand dollars (\$700,000.00) by these Defendants, and have incurred hundreds of thousands of dollars in attorneys' fees and costs defending against the Defendants' illegal scheme, which Marcus has been required to pay.

c. The Defendants have violated Marcus & Millichap's constitutional and other rights in furtherance of the Defendants' unlawful endeavors to stifle interstate

³ The Defendants have targeted Marcus through prosecution and disciplinary actions against Marcus & Millichap and other Marcus Brokers. Marcus—being an entity—can only act by and through its individual agents and representatives. Thus, a deprivation of its agents' rights is a deprivation of the entity's rights, particularly when the agents are being prosecuted (and denied constitutional rights) for their conduct while acting within their agency relationship on behalf of the entity. Moreover, the Defendants made it clear that their prosecution of Marcus & Millichap and other Marcus Brokers has been intended to harm Marcus as an entity, as the Defendants made clear they desired to send a "message" to Marcus through the Defendants' prosecution and disciplining of Marcus's Brokers. Defendants, through their targeting of and actions taken against Marcus's Brokers, have violated Marcus's constitutional and federal rights to interstate commerce, fair competition, and due process, among other things, as alleged in this Complaint.

1 commerce and thwart fair competition for the Defendants' own financial gain and
2 interests.

3 d. The individual plaintiffs named herein have each assigned their claims to
4 Marcus, to the extent said claims are assignable, to be prosecuted in Marcus's own
5 name or in the agents' own name.

6 e. The individual plaintiffs named herein are, by no means, the only Marcus
7 Brokers who have been targeted by Defendants. Numerous other Marcus Brokers
8 have been targeted, prosecuted, and disciplined by Defendants. For example, Marcus
9 Broker Glen Kunofsky has been investigated, prosecuted, or disciplined by the
10 Defendants in connection with at least six (6) Nevada properties. Kunofsky has been
11 fined no less than three hundred one thousand two hundred twelve dollars and ninety-
12 nine cents (\$301,212.99) by the Defendants, which Marcus must pay on Kunofsky's
13 behalf. Marcus Broker Alvin Mansour has been investigated, prosecuted, and
14 disciplined by the Defendants in connection with at least two (2) Nevada properties.
15 Mansour has been fined no less than thirty thousand eight hundred eleven dollars and
16 seventy-nine cents (\$30,811.79) by the Defendants, which Marcus must pay on
17 Mansour's behalf. Numerous other Marcus Brokers such as Todd Manning have been
18 targeted by Defendants. Todd Manning is an in-state Nevada licensed Broker, but has
19 been targeted, prosecuted, and disciplined by the Defendants for cooperating with and
20 assisting out-of-state Brokers doing business in Nevada, even when trying to comply
21 with Defendants' unlawful restrictions. Marcus has been harmed by each and every
22 such investigation, prosecution, and disciplinary action taken against Marcus Brokers.

23 24. M&M of Nevada is an affiliate of M&M and associates with Nevada-licensed
24 Brokers, including some of the individual plaintiffs as noted below.

25 25. Plaintiff White is an individual residing in Nevada and is a broker associated with
26 Marcus or one of its affiliates. White is a Nevada-licensed broker, but even with his Nevada
27 license he has been investigated, prosecuted, or disciplined by the Defendants for having
28 cooperated and associated with out-of-state brokers in connection with at least ten (10) Nevada

1 properties. White has been fined no less than thirty-six thousand one hundred twenty-five dollars
2 and eleven cents (\$36,125.11) by the Defendants. White has assigned his claims to Marcus to be
3 prosecuted in Marcus's name and/or in White's own name, to the extent such claims are so
4 assignable. To the extent any claim is not assignable to Marcus, White appears on his own behalf
5 by and through the undersigned counsel.

6 26. Plaintiff Allred is an individual residing in California and is a broker associated
7 with Marcus or one of its affiliates. Allred has been investigated, prosecuted, or disciplined by
8 the Defendants in connection with at least three (3) Nevada properties. Allred has been fined no
9 less than three hundred one thousand six hundred thirty-nine dollars and eighty-nine cents
10 (\$301,639.89) by the Defendants. Allred has assigned his claims to Marcus to be prosecuted in
11 Marcus's name and/or in Allred's own name, to the extent such claims are so assignable. To the
12 extent any claim is not assignable to Marcus, Allred appears on his own behalf by and through the
13 undersigned counsel.

14 27. Defendant Reiss is an individual who resides in Clark County, Nevada, and is
15 President of the NREC. Reiss is an actively licensed real estate broker associated with Coldwell
16 Banker Premier Realty, doing business in the State of Nevada in competition with Marcus
17 Brokers. Defendant Reiss played an active role in the drafting and enacting of the regulatory
18 amendments at issue in this case, and/or has actively participated in furthering the Defendants'
19 illegal scheme through participation in the investigations, prosecutions, or disciplining of Marcus
20 Brokers, including Marcus & Millichap, and has benefited from the Defendants' unlawful scheme
21 as an in-state licensed broker, competitor to Marcus Brokers, and active market participant in the
22 industry Defendants regulate.

23 28. Defendant Barrett is an individual who resides in Clark County, Nevada, and is
24 Vice President of the NREC. Barrett is an actively licensed real estate broker associated with
25 Barrett & Co, Inc., doing business in the State of Nevada in competition with Marcus Brokers.
26 Defendant Barrett played an active role in the drafting and enacting of the regulatory amendments
27 at issue in this case, and/or has actively participated in furthering the Defendants' illegal scheme
28 through participation in the investigations, prosecutions, or disciplining of Marcus Brokers,

1 including Marcus & Millichap, and has benefited from the Defendants' unlawful scheme as an in-
2 state licensed broker, competitor to Marcus Brokers, and active market participant in the industry
3 Defendants regulate.

4 29. Defendant Capurro is an individual who resides in Washoe County, Nevada, and is
5 Secretary of the NREC. Capurro is an actively licensed real estate broker associated with Capurro
6 & Reid Real Estate, doing business in the State of Nevada in competition with Marcus Brokers.
7 Defendant Capurro played an active role in the drafting and enacting of the regulatory
8 amendments at issue in this case, and/or has actively participated in furthering the Defendants'
9 illegal scheme through participation in the investigations, prosecutions, or disciplining of Marcus
10 Brokers, including Marcus & Millichap, and has benefited from the Defendants' unlawful scheme
11 as an in-state licensed broker, competitor to Marcus Brokers, and active market participant in the
12 industry Defendants regulate .

13 30. Defendant Schwartz is an individual who resides in Clark County, Nevada, and is
14 a Commissioner of the NREC. Schwartz is an actively licensed real estate broker associated with
15 Coldwell Banker Premier Realty, doing business in the State of Nevada in competition with
16 Marcus Brokers. Defendant Schwartz played an active role in the drafting and enacting of the
17 regulatory amendments at issue in this case, and/or has actively participated in furthering the
18 Defendants' illegal scheme through participation in the investigations, prosecutions, or
19 disciplining of Marcus Brokers, including Marcus & Millichap, and has benefited from the
20 Defendants' unlawful scheme as an in-state licensed broker, competitor to Marcus Brokers, and
21 active market participant in the industry Defendants regulate .

22 31. Defendant Opatik is an individual who resides in Nye County, Nevada, and was at
23 all times relevant hereto a Commissioner of the NREC. Opatik is an actively licensed real estate
24 broker associated with Realty Executives, doing business in the State of Nevada in competition
25 with Marcus Brokers. Defendant Opatik played an active role in the drafting and enacting of the
26 regulatory amendments at issue in this case, and/or actively participated in furthering the
27 Defendants' illegal scheme through participation in the investigations, prosecutions, or
28 disciplining of Marcus Brokers, including Marcus & Millichap, and has benefited from the

1 Defendants' unlawful scheme as an in-state licensed broker, competitor to Marcus Brokers, and
2 active market participant in the industry Defendants regulate .

3 32. Defendant Johnson (the Former NREC President) is an individual who resides in
4 Washoe County, Nevada and was a Commissioner of the NREC at times relevant to these
5 allegations. The Former NREC President is and was at times relevant hereto an actively licensed
6 real estate broker associated with the Johnson Group, doing business in the State of Nevada in
7 competition with Marcus Brokers. Defendant Johnson played an active role in the drafting and
8 enacting of the regulatory amendments at issue in this case, and has actively participated in
9 furthering the Defendants' illegal scheme through participation in the investigations,
10 prosecutions, or disciplining of Marcus Brokers, including Marcus & Millichap, and has benefited
11 from the Defendants' unlawful scheme as an in-state licensed broker, competitor to Marcus
12 Brokers, and active market participant in the industry Defendants regulate. Many, if not most or
13 all, of the Defendants' investigations or other actions against Marcus Brokers originated with
14 Defendant Johnson, after Johnson had left the NREC. Because of Johnson's actions as a private
15 individual, after he left the NREC, he is not eligible for any immunity that might otherwise have
16 been afforded him.

17 33. Defendant Holle (the NRED Chief Investigator) is an individual who resides in
18 Clark County, Nevada and was at all times relevant hereto the person responsible for the
19 investigations against Marcus & Millichap Brokers as the Chief Compliance/Audit Investigator
20 for the NRED. Defendant Holle played an active role in the drafting and enacting of the
21 regulatory amendments at issue in this case, and has actively participated in furthering the
22 Defendants' illegal scheme through participation in the investigations, prosecutions, or
23 disciplining of Marcus Brokers, including Marcus & Millichap, and has benefited from the
24 Defendants' unlawful scheme due to his employment with the NRED. Defendant Holle was
25 responsible for the investigations of the Plaintiff Brokers, testified at the Brokers' hearings, and
26 recommended disciplinary actions or penalties. Defendant Holle exceeded any scope of authority
27 he may have had as an NRED investigator when he, among other things, conspired with the other
28 Defendants to create the unlawful regulatory scheme at issue in this case, and when he took action

1 in furtherance of that unlawful scheme including communicating disciplinary actions taken
2 against Marcus Brokers without due process of law and recommending disciplinary action against
3 Marcus Brokers that was neither supported by evidence nor permitted by applicable statutes.
4 Defendant Holle was previously licensed as a real estate broker in the state of Nevada, and thus
5 competed with Marcus & Millichap

6 34. The NRED is an agency of the State of Nevada. The NRED employs Defendant
7 Holle and oversees the NREC and each of the NREC Commissioners. The NRED has failed to
8 supervise the individual Defendants and has allowed them to abuse their offices and exceed the
9 scope of their authorities and to misuse their positions with the NREC and NRED to further their
10 unlawful endeavors. The NRED is named as a Defendant in this action for purposes of relief only.
11 The Complaint alleges that the individual Defendants acted beyond any scope of their respective
12 employment or authorities with the State of Nevada, did not exercise due care but instead acted
13 intentionally to misuse their positions or authority to further their unlawful endeavors, and their
14 actions were not related to their official positions but went far beyond any such positions allowed.
15 As such, they are each personally and individually liable for their conduct. However, Marcus &
16 Millichap seeks equitable relief such as injunctions, disgorgement, and reorganization against and
17 affecting the NRED. The NRED is, thus, named as a Defendant in accordance with Nevada
18 Revised Statute 41.031.

19 35. The NREC is a commission of the State of Nevada. The individual NREC
20 Defendants are, or were at times relevant hereto, commissioners in the NREC. The individual
21 NREC Defendants have utilized the NREC and abused their positions with the NREC, exceeding
22 the scope of their authorities and misusing their positions to further their unlawful endeavors. The
23 NREC is named as a Defendant in this action for purposes of relief only. The Complaint alleges
24 that the individual Defendants acted beyond any scope of their respective employment or
25 authorities with the State of Nevada, did not exercise due care but instead acted intentionally to
26 misuse their positions or authority to further their unlawful endeavors, and their actions were not
27 related to their official positions but went far beyond any such positions allowed. As such, they
28 are each personally and individually liable for their conduct. However, Marcus & Millichap

1 seeks equitable relief such as injunctions, disgorgement, and reorganization against and affecting
 2 the NREC. The NREC is, thus, named as a Defendant in accordance with Nevada Revised Statute
 3 41.031.

4 36. John and Jane Does 1-10 are individuals who are not presently known to the
 5 Plaintiffs at this time but who are now or have been participants in the Defendants' unlawful
 6 schemes and objectives. These defendants may include past or future members of the NREC,
 7 employees of the NRED, or supervisors, directors, managers, or others who had the authority and
 8 ability to stop or prevent the other named Defendants from pursuing their unlawful endeavors but
 9 either failed to do so or actively participated therein with the other named Defendants. Plaintiffs
 10 will amend their pleadings to name these defendants as their identities are discovered.

11 37. Each of the Defendants is, or has been at times relevant hereto, part of a criminal
 12 enterprise intent on stifling interstate real estate brokerage and protecting their own economic
 13 interests as local Nevada real estate brokers or agents, in violation of federal criminal antitrust
 14 statutes.

15 GENERAL ALLEGATIONS

16 BRIEF INTRODUCTION TO REAL ESTATE BROKERAGE

17 38. Many aspects of the modern commercial real estate market are national—and
 18 international—in scope.

19 39. By and large, buyers and sellers of commercial real estate are sophisticated
 20 investors who often own multiple properties located in more than one state.

21 40. Many aspects of the market for brokering commercial real estate transactions are
 22 national—not local—in scope, as investors look for investment opportunities irrespective of
 23 location.

24 41. Many commercial real estate transactions involve the simultaneous transfer of
 25 more than one property located in more than one state or involve clients who transact business in
 26 several states. For example, one might own a portfolio of specific restaurants, student or senior
 27 housing complexes, retail stores, or hotels, with locations in several states. Owners of such
 28 properties generally do not want to engage individual brokers to sell each individual property in

1 their portfolio, particularly when local brokers often lack experience, knowledge, and qualified
 2 potential investors or buyers to effectively market and sell these properties. Instead, owners look
 3 to national brokers who specialize in the types of properties being sold, who have experience,
 4 knowledge, and a nationwide pool of qualified potential investors, and who can market and sell
 5 the entire portfolio of properties in one transaction, even in multiple states. This preferred method
 6 is far more efficient and cost effective for, and results in better quality of service provided to,
 7 consumers.

8 42. Given the national scope of many components of commercial real estate, clients
 9 partner and form long-standing advisor relationships with firms who have the ability to broker
 10 complex, multi-state transactions, and for their strategic planning, market analysis, value analysis,
 11 trend forecasts, and counseling on an international or national scale – as opposed to forcing
 12 clients to find a new unknown, untrusted, local broker of limited resource and expertise in each
 13 state.

14 43. As explained in detail below, Defendants—abusing and exceeding their cloaks of
 15 authority as the sole and controlling members of the NREC at times relevant hereto, and as the
 16 chief investigator of charges prosecuted before the NREC—strictly regulate and limit Marcus’s
 17 business and that of its Brokers within Nevada’s borders, making it impossible for Marcus’s out-
 18 of-state Brokers to do business in Nevada except in the most limited of circumstances.

19 **DEFENDANTS’ RESTRICTIONS ON NEVADA BROKERAGE ACTIVITIES**

20 44. The State of Nevada regulates, investigates, and disciplines real estate brokerages
 21 within its borders.

22 45. Nevada statutes created two administrative entities, the Nevada Real Estate
 23 Division (NRED) and the Nevada Real Estate Commission (NREC), to oversee real estate
 24 brokerage within the state.

25 46. The NREC adopts regulations pertaining to real estate brokerage, including
 26 “regulations establishing standards for the operation of licensees’ offices and for their business
 27 conduct and ethics,” (*See Nev. R. Stat. § 645.050(2)*), and—acting under color of state law—held
 28

1 criminal hearings and disciplines brokers accused of running afoul of the NREC's rules and
 2 regulations. The NREC thus acts as its own lawmaker and its own judiciary.

3 47. The NREC's authority is dictated and limited by applicable statutes, but the NREC
 4 Defendants have acted far in excess of the limits imposed by statute and have abused and misused
 5 their positions for unlawful purposes.

6 48. Each of the NREC Defendants is, or was at times relevant hereto, a member of the
 7 NREC. Thus, the NREC was at all times relevant hereto wholly and exclusively controlled and
 8 operated by the NREC Defendants. Also, former NREC President Johnson was a controlling
 9 member of the NREC at times relevant hereto, including when the subject regulations were
 10 amended by the NREC. Even those NREC Defendants who may not have been members at the
 11 time the subject regulations were illegally amended are culpable and liable together with the
 12 NREC Defendants who did enact those regulations, as these Defendants have participated in and
 13 perpetuated the fraudulent scheme since the time they became commissioners in the NREC.⁴

14 49. The requirements to be a member of the NREC include being actively engaged in
 15 a business as a Nevada real estate broker for at least three years preceding appointment or a
 16 Nevada real estate broker/salesman for at least five years preceding appointment. Each of the
 17 NREC Defendants and Former NREC President Johnson is a Nevada-licensed real estate broker
 18 who lives and does business in Nevada.

19 50. NRED Chief Investigator Holle is the person responsible for all investigations of
 20 charges prosecuted before the NREC. Defendant Holle is motivated to participate in, and
 21 financially benefits from, the Defendants' unlawful scheme, because—at a minimum—he is

22
 23 ⁴ According to the NRED's website, as of November 1, 2018, Defendant Opatik is no longer a
 24 commissioner on the NREC but has been replaced by Lee R. Gurr. Defendant Opatik is named as
 25 a party hereto, and is liable together with the other NREC Defendants, for her conduct while she
 26 was a member of the NREC. Lee R. Gurr has not been named as a defendant because, to date and
 27 to the Plaintiffs' knowledge, Gurr did not participate in the unlawful enactment of the regulations
 28 at issue in this case nor participate in the investigation, harassment, prosecution or disciplining of
 Marcus Brokers or otherwise engage in the anti-competitive and otherwise unlawful conduct
 alleged herein. Gurr is, however, like the other NREC Defendants, an active market participant in
 the industry which Gurr now regulates. In the event Gurr does participate in the investigation,
 harassment, prosecution or disciplining of Marcus Brokers or otherwise engage in the anti-
 competitive and otherwise unlawful conduct alleged herein, this Complaint may be amended to
 state claims against Gurr as well.

1 compensated for his investigations and participation in the Defendants' regulatory and
2 disciplinary scheme. While Holle's compensation is in the form of salary associated with his
3 position with the NRED, Holle has far exceeded any scope of authority and acted beyond what
4 could relate to his employment position by actively participating in and furthering the
5 Defendants' unlawful scheme. Holle knowingly assists in the denials of due process to Marcus
6 Brokers and the imposition of disciplinary actions that are not supported by evidence nor
7 permitted by applicable statutes.

8 51. By statute, the Nevada legislature has mandated that out-of-state brokers be
9 allowed to share commissions with in-state brokers working cooperatively on Nevada real estate
10 transactions. *See Nev. Rev. Stat. § 645.280(1)*. The Nevada legislature placed no restrictions on
11 the types of real estate transactions for which such cooperation can occur and commissions be
12 shared. The Nevada legislature has never given Defendants authority to restrict the types of real
13 estate transactions for which such cooperation can occur and commissions be shared.

14 52. Yet, as alleged above, in or around 2014, members of the NREC—all of whom are
15 real estate brokers licensed by and living in the State of Nevada—and NRED Chief Investigator
16 Holle determined that the then-current state regulations did not adequately protect in-state brokers
17 from losing business and commissions to out-of-state brokers.

18 53. The NRED Chief Investigator—exceeding his authority as an NRED
19 investigator—then collaborated and conspired with members of the NREC to amend the
20 regulations in violation of the scope of the NREC's statutory authority, to—as he put it—prevent
21 out-of-state brokers from “taking business away from our Nevada licensees.”

22 54. “[W]e want to prohibit . . . out of state licensees listing Nevada property for
23 Nevada property owners whether the property owners are residents of Nevada or not,” noted the
24 NRED Chief Investigator.

25 55. “Also,” the NRED Chief Investigator continued, “we do not want out of state
26 licensees to represent Nevada residents in the purchase of Nevada real estate for the same reason”
27 (that is to say, to prevent them from “taking business away from our Nevada licensees”).
28

1 56. The applicable Nevada statute contains no such restrictions and does not authorize
2 the NREC to impose any such restrictions.

3 57. The members of the NREC—in collaboration with the NRED Chief Investigator—
4 in an effort to unlawfully stifle fair competition and thwart interstate commerce, amended Nevada
5 Administrative Code § 645.185 to go far beyond the applicable statutes' authorizations. The
6 regulation now reads:

7 **An out-of-state broker may not use a cooperating broker's certificate as**
8 **authority to sell or attempt to sell real estate in Nevada on behalf of the owner**
9 **of that real estate. Such a certificate may be used only for the purpose of**
10 **allowing the out-of-state broker or salesperson to represent a person other**
11 **than a resident of Nevada in the purchase of real estate in Nevada.**

12 Nev. Admin. Code § 645.185 (11).

13 58. The amended regulation:

- 14 a. Prohibits any out-of-state broker from representing any seller of any Nevada
15 real estate,
- 16 b. Prohibits any out-of-state broker from representing any Nevada resident
17 seeking to purchase any Nevada real estate, and
- 18 c. Only allows out-of-state brokers to represent out-of-state purchasers of Nevada
19 real estate if, and only if, the out-of-state broker associates with (and, thus, has to
20 share commissions with) a local resident Nevada-licensed broker.

21 59. The amendments to Nevada Administrative Code § 645.185 were enacted as a
22 result of a conspiracy between members of the NREC at that time, including Former NREC
23 President Johnson, and NRED Chief Investigator Holle, for the unlawful purpose of ensuring that
24 in-state Nevada-licensed brokers receive commissions on every brokered real estate transaction in
25 the state, in nearly all circumstances to the exclusion of out-of-state brokers, in a concerted,
26 unlawful effort to stifle interstate commerce and thwart fair competition in their market.

27 60. The amendments to the regulation exceeded the scope of NREC's authority under
28 the Nevada Administrative Procedures Act, Nev. Rev. Stat. § 233B.

a. The Administrative Procedures Act authorizes state agencies to adopt “reasonable” regulations “as are necessary to the proper execution” of the agency’s functions assigned to it by law, but only to the extent the agency is authorized by statute to do so. *See* Nev. Rev. Stat. § 233B.040(1).

b. In this case, there is no statute that authorizes the NREC to adopt regulations to stifle interstate commerce and thwart fair competition by prohibiting out-of-state brokers from (i) representing any seller of Nevada real estate, or (ii) representing any Nevada resident in connection with the purchase of Nevada real estate.

61. The amendments to the regulation were illegally enacted without any of the requisite procedural safeguards, such as notice to the public or opportunities for public comments, in violation of Nevada law. The Nevada Administrative Code requires,

[B]efore adopting, amending, or repealing:

(a) A permanent regulation, the agency must, after receiving the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063:

(1) If it is the first hearing on the regulation, give at least 30 days’ notice of its intended action, unless a shorter period of notice is specifically permitted by statute. When posted, the agency must include notice that the regulation that is posted on the Internet website of the agency 3 working days before the hearing will be the regulation considered. The agency shall ensure that the regulation to be considered at the hearing is posted on the Internet website of the agency 3 working days before the hearing.

(2) If it is the second or subsequent hearing on the regulation, including, without limitation, a subsequent hearing on an adopted regulation that has not been approved by the Legislative Commission or the Subcommittee to Review Regulations pursuant to NRS 233B.067, in order to approve a revision to the regulation, give at least 3 working days’ notice of its intended action.

See Nev. Rev. Stat. § 233B.060(1).

62. The Administrative Procedures Act requires also,
At the same time that an agency provides notice of any meeting or workshop relating to the adoption of a proposed regulation pursuant to this chapter . . . , the agency shall submit an electronic copy of the notice to the Director of the Legislative Counsel Bureau. The Director shall cause the notice to be posted

1 **on the same day on the Internet website maintained by the Legislative**
 2 **Counsel Bureau.**

3 *See Nev. Rev. Stat. § 233B.0601.*

4 63. The “notice” required by Nev. Rev. Stat. § 233B.060(1), cited above, was required
 5 to include, among other things:

6 **(1) A statement of the need for and purpose of the proposed**
 7 **regulation.**

8 ...

9 **(3) If the proposed regulation is a permanent regulation, a statement**
 10 **explaining how to obtain the approved or revised text of the proposed**
 11 **regulation prepared by the Legislative Counsel pursuant to NRS**
 12 **233B.063.**

13 **(4) A statement of the estimated economic effect of the regulation on**
 14 **the business which it is to regulate and on the public. These must be stated**
 15 **separately and in each case must include:**

16 **(I) Both adverse and beneficial effects; and**

17 **(II) Both immediate and long-term effects.**

18 **(5) A statement identifying the methods used by the agency in**
 19 **determining the impact on a small business prepared pursuant to**
 20 **subsection 3 of NRS 233B.0608.**

21 **(6) The estimated cost to the agency for enforcement of the proposed**
 22 **regulation.**

23 ...

24 **(10) The time when, the place where and the manner in which**
 25 **interested persons may present their views regarding the proposed**
 26 **regulation.**

27 *See Nev. Rev. Stat. § 233B.0603(1).*

28 64. Pursuant to the Nevada Administrative Procedures Act, the NREC was required to
 afford all interested persons “a reasonable opportunity to submit data, views or arguments” on the
 agency’s proposed amendments to the regulations. *See Nev. Rev. Stat. § 233B.061(1).*

 65. The NREC was required to conduct at least one workshop to solicit comments
 from interested persons on one or more general topics to be addressed in a proposed regulation”

1 and provide notice of the same at least 15 days before the workshop. *See* Nev. Rev. Stat. §
2 233B.061(2).

3 66. All state agencies “that intend[] to adopt, amend or repeal a permanent regulation
4 [are required to] deliver to the Legislative Counsel a copy of the proposed regulation. The
5 Legislative Counsel [is then required to] examine and if appropriate revise the language submitted
6 so that it is clear, concise and suitable for incorporation in the Nevada Administrative Code”
7 *See* Nev. Rev. Stat. § 233B.063(1).

8 67. The Nevada Administrative Procedures Act imposes numerous other requirements
9 and safeguards, too numerous to list in this Complaint, but including such requirements as
10 depositing a copy of the notice and text of the proposed amendment with the State Library,
11 Archives, and Public Records Administrator (Nev. Rev. Stat. § 233B.0607), determining the
12 proposed amendment’s impact on small businesses (Nev. Rev. Stat. § 233B.0608) and preparing a
13 small business impact statement (Nev. Rev. Stat. § 233B.0609).

14 68. Defendants did not comply with these requirements when enacting the subject
15 amendments to the Nevada Administrative Code.

16 69. The result of the illegally enacted regulations is an anti-competition scheme which
17 limits out-of-state brokers trying to do any business in Nevada to just two options, though as
18 explained below neither allows out-of-state brokers to do business except in the most limited
19 circumstances:

20 a. First, out-of-state brokers must obtain a full “license” from the State of
21 Nevada; or

22 b. Alternatively, out-of-state brokers must obtain a “cooperative certificate” from
23 the State, but then can only do business in the most limited circumstances as outlined
24 above.

25 70. According to Defendants, unless out-of-state brokers obtain one of these “licenses”
26 or “cooperative certificates,” they cannot do brokerage business in Nevada, regardless of their
27 individual levels of expertise and knowledge, or their status as licensed brokers in any other state.
28

71. However, the first purported option supposedly available to out-of-state brokers (obtaining a Nevada brokerage license) is not viable.

a. To obtain a Nevada license, the broker must not only pass a Nevada-specific exam and complete Nevada-specific continuing education courses to maintain the license, which might be reasonable restraints, the broker must also:

i. Maintain a physical place of business in Nevada, and

ii. Conduct all Nevada brokerage from that physical place of business within Nevada.

b. Licensees, thus, would have to be physically present in Nevada, maintaining a physical place of business and conducting all Nevada brokerage activity therein. The broker would, thus, no longer be out-of-state, as all Nevada brokerage activities would be conducted in the required in-state physical place of business in the State of Nevada.

c. Such restrictions render it impossible for out-of-state brokers to lawfully obtain and maintain an active Nevada license, while living and working “out-of-state.”

d. The physical presence and office requirements are unlawful restraints on trade in violation of the Commerce Clause and other constitutionally and federally protected rights.

e. The constitutionality of this restriction if the subject of ongoing federal court proceedings involving these parties. *See Marcus & Millichap Real Estate Investment Services of Nevada, Inc. v. Chandra, et al.*, District of Nevada, 2:16-CV-01299 (the “Federal Court Proceedings”). By this proceeding, Plaintiffs challenge the Defendants’ restrictions, not only on constitutional grounds but as violations of federal antitrust laws, and challenge the Defendants’ conduct as violations of those antitrust laws, the RICO statute, Section 1983, and other state and common laws.

72. The other option for out-of-state brokers to do business in Nevada is to obtain a “cooperative certificate,” but even this is not available option except in the most limited circumstances.

a. Defendants have unlawfully—without public notice or opportunity for public comment—adopted and are enforcing regulations to limit use of “cooperative certificates” to only a tiny subset of certain types of transactions:

i. Incredibly, out-of-state brokers may not “sell or attempt to sell real estate in Nevada on behalf of the owner of that real estate.” *See Nev. Admin. Code* § 645.185(11). This is regardless of the residence status of the owner of the property.

ii. Cooperative certificates “may be used only for the purpose of allowing the out-of-state broker or salesperson to represent a person other than a resident of Nevada in the purchase of real estate in Nevada.” *See id.* (emphasis added).

b. Thus, according to Defendants, out-of-state brokers (i) cannot represent an owner of Nevada real estate who wants to sell their property, in any circumstance, regardless of whether the property owner is or is not a resident of Nevada; and (ii) cannot represent any Nevada resident in a Nevada real estate transaction, whether buying or selling real estate, in any circumstances.

c. Out-of-state brokers are permitted by the Defendants only to represent non-residents of Nevada who are seeking to purchase Nevada real estate, but even then the out-of-state broker can only do so if they affiliate (i.e., share their commissions) with an in-state Nevada broker, such as Defendants.

73. Since the NREC promulgates the rules and regulations establishing the conditions under which such certificates are issued and cancelled, it controls the circumstances in which any out-of-state broker is permitted to compete with the members of the NREC or other similarly situated in-state Nevada-licensed brokers.

74. Defendants abused those powers to prohibit any business being conducted by any out-of-state broker in Nevada in all but the most exceptionally limited circumstances.

75. The Defendants actively harass and pursue out-of-state brokers doing business in Nevada for alleged violations of the Defendants’ illegally enacted and unconstitutionally

1 restrictive limitations on out-of-state brokerage activities, by initiating investigations against
2 those brokers, then adjudicating and enforcing the very regulations the Defendants themselves
3 enacted. The Defendants pursue out-of-state brokers in furtherance of their unlawful scheme to
4 keep out-of-state brokers from doing business in Nevada, stifling interstate commerce and
5 thwarting unfair competition. The Defendants, however, do not stop at pursuing out-of-state
6 brokers. The Defendants also actively punish in-state brokers who are willing to work or
7 associate with out-of-state brokers, such as Plaintiff Perry White and other Marcus Brokers such
8 as Todd Manning. The Defendants punish any outsiders and any insiders who are willing to work
9 with them.

10 76. The Defendants thus protect their own financial interests, and those of similarly
11 situated in-state Nevada-licensed brokers, by severely and unreasonably limiting the persons
12 whom out-of-state brokers are permitted to represent and, even in those exceptionally limited
13 circumstances in which an out-of-state broker can do business in Nevada, requiring all out-of-
14 state brokers to associate with in-state brokers in order to do any such business in this state.

15 77. The scheme created and maintained by the Defendants is totally and unreasonably
16 restrictive of interstate commerce in violation of the Commerce Clause of the U.S. Constitution
17 and federal antitrust laws.

18 78. The Defendants, utilizing their membership in the NREC, have adopted or
19 enforced these and other regulations and restrictions on out-of-state brokers that are not permitted
20 or supported by Nevada law, and that violate the U.S. Constitution and federal antitrust laws, in
21 an effort to unlawfully restrict competition in the Defendants' brokerage market.

22 79. The Defendants, and each of them, have utilized their respective positions as
23 commissioners in the NREC, and as Chief Investigator for the NRED, to enact, investigate, and
24 enforce rules and regulations relating to real estate brokerage in Nevada that far exceed,
25 contradict, and undermine the authority dictated and limited by the applicable state statutes,
26 particularly as relates to interstate or out-of-state brokerage of Nevada real estate.

27 80. The Nevada legislature has, by statute, mandated that out-of-state brokers be
28 permitted to cooperate with in-state brokers, and vice-versa, on all Nevada real estate

1 transactions. The Defendants have consciously and willfully disregarded this statutory mandate,
2 and instead worked together to preclude intra-state brokerage cooperation on all but a narrow
3 subset of real estate transactions, and to impose severe reputational and monetary penalties
4 against brokers even though those brokers operate within the parameters of the statute as enacted
5 by the Nevada legislature.

6 81. Each of the Defendants has utilized their positions to adopt, investigate or enforce
7 regulations defining which brokers are allowed to do business in Nevada and under what
8 conditions those brokers are allowed to do business in Nevada. In other words, the Defendants
9 utilize their positions, in excess of and in contradiction to the authority granted to them, to
10 determine who may compete against them as brokers in the Nevada real estate market and to
11 define the conditions under which those brokers may compete against the Defendants.

12 82. The Defendants have created and are actively maintaining a regulatory and
13 disciplinary scheme that so unreasonably restricts the transactions that an out-of-state broker can
14 participate in that consumers have no choice but to engage in-state brokers, and exclusively in-
15 state brokers, such as the Defendants for nearly all real estate transactions. Even in those
16 exceedingly limited circumstances when consumers can engage out-of-state brokers to do
17 business in Nevada, those brokers are required to associate with resident in-state Nevada brokers,
18 further protecting in-state licensees.

19 83. The Defendants have thus adopted and enforced anticompetitive licensing
20 regulations that disadvantage out-of-state brokers, such as Marcus Brokers, to the benefit of in-
21 state Nevada brokers such as the Defendants.

22 84. The Defendants have thus created a limited brokerage market within the State of
23 Nevada which drives up demand for the Defendants' brokerage services by removing would-be
24 competitors from the market, allowing the Defendants to benefit financially from the scarcity of
25 competition they have created and maintained through strict enforcement of unconstitutional and
26 unlawful restrictions on interstate commerce, to the detriment of the Defendants' would-be
27 competitors such as Marcus and its Brokers and to the detriment of the residents, property
28 owners, and buyers of property in the State of Nevada.

85. The regulatory and disciplinary scheme created and maintained by the Defendants is protectionist of in-state licensed brokers on a scale unprecedented in others of the United States.

86. The Defendants' regulatory and disciplinary scheme is designed to thwart interstate competition of real estate brokers to the sole benefit of the Defendants and other in-state Nevada-licensed real estate brokers, to the detriment of real estate owners and consumers, and to the severe harm and detriment to Marcus and its Brokers.

87. Each of the Defendants has benefited and continues to benefit from the protectionist regulatory and disciplinary scheme they themselves created and maintain. The NREC Defendants and the Former NREC President each benefit as in-state Nevada-licensed brokers who benefit from decreased competition and increased demands. The NRED Chief Investigator benefits from secured and continued employment investigating charges brought as part of the unlawful enterprise.

DEFENDANTS' SPECIFIC ACTIONS AGAINST MARCUS AND ITS BROKERS

I. Defendants Targeted Marcus Brokers to Stop Out-of-State Brokers from Doing Business in Nevada.

88. After illegally enacting the amendment to the Nevada Administrative Code to stifle fair competition and thwart interstate commerce in the state of Nevada, Former NREC President Johnson (who was President of the NREC at the time) began conducting his own research and investigations into potential violations of the illegally enacted amendments, without receiving any complaint from any member of the general public prompting him to do so.

89. Former NREC President Johnson concluded, "It appears that over \$200,000,000 of sales (\$5,000,000 in commissions) is not going to Nevada at this time just in the Retail listing; Much larger when annualized."

90. Former NREC President Johnson continued, "On top of this, with the other segments included there was a total of 3,129 listings, using the same parameters. [sic] Thus 12% equals 375 non licensed listings which extrapolates [sic] to over \$1.4 billion of listings at any one time (annualized it probably [sic] 2 to 3 times this)."

1 91. Former NREC President Johnson communicated these conclusions to NRED Chief
2 Investigator Holle and to the other NREC Defendants.

3 92. Shortly thereafter, the NRED Chief Investigator, the NREC Defendants, and the
4 Former NREC President (while he was in office) began investigating, prosecuting, and
5 disciplining Marcus Brokers for purportedly violating the unlawful regulations enacted by the
6 NREC, all without any complaint ever having been filed against these Brokers by any member of
7 the general public.

8 a. Without any complaint against Marcus & Millichap from a member of the
9 general public, the Defendants cannot justify their targeting of Marcus & Millichap
10 and other Marcus Brokers. Defendants have targeted Marcus Brokers to stop all out-
11 of-state brokers from doing business in Nevada.

12 b. Defendants' treatment of Marcus Brokers is systemic, expansive, and
13 sweeping. Marcus Brokers have been targeted for investigation and/or prosecution no
14 less than thirty (30) times since 2016, and more than \$700,000.00 in fines have been
15 imposed as punishments against these Brokers.

16 93. Nevada Administrative Code § 645.680 requires the NREC to prepare and require
17 the use of a "standard form or affidavit" for complaints against brokers.

18 94. As of the date of this filing, since 2016, at least thirty (30) investigations have been
19 initiated against no fewer than fifteen (15) of Marcus's Brokers for supposed violations of the
20 regulatory and disciplinary scheme created and maintained by the Defendants.

21 95. In each case, Marcus Brokers have—or will, for those matters still pending—
22 requested copies of the affidavits/forms required under Nevada Administrative Code § 645.680,
23 to know the specific allegations and complaints asserted against the Brokers.

24 96. Defendants have, in every instance, refused to provide copies and/or refused to
25 compel the NRED or its attorneys prosecuting Marcus Brokers to provide copies of the
26 complaints against the Brokers.

97. Defendants have refused to provide copies of the complaints because, to Marcus's knowledge, no complaint or affidavit has ever been submitted to the NREC by any member of the general public against Marcus Brokers.

98. Instead, Defendants have, on their own and without any complaint by any member of the general public, targeted Marcus Brokers for investigation and prosecution, in violation of Nevada Administrative Code § 645.680, in order to stop out-of-state brokers from doing business in this state.

II. Defendants Have Prosecuted and Adjudicated Criminal Charges Against Marcus Brokers Without Jurisdiction To Do So.

99. Marcus Brokers have been charged with violations of Nevada Revised Statute § 645.230 ("NRS § 645.230" or "Section 230"), which provides in pertinent part,

It is unlawful for any person, limited-liability company, partnership, association or corporation to engage in the business of, act in the capacity of, advertise or assume to act as, a: (a) Real estate broker, real estate broker-salesperson or real estate salesperson within the State of Nevada without first obtaining the appropriate license from the Real Estate Division as provided for in this chapter.

See NRS § 645.230(1)(a).

100. Section 230, however, is a criminal statute. Discretion is afforded to the NRED to determine which charges should be prosecuted, but all such charges must be referred to a "court of competent jurisdiction," where "[t]he district attorney of each county shall prosecute all violations of this section in their respective counties in which violations occur, unless prosecuted by the Attorney General. Upon the request of the Administrator, the Attorney General shall prosecute any violation of this section in lieu of the district attorney." *See* NRS § 645.230(2), (3).

101. Thus, the NRED has discretion on whether charges should or should not be prosecuted, and the Administrator has discretion to determine whether the District Attorney or the Attorney General will be the one to prosecute charges that are brought; there is no discretion, however, as to where the charges must be prosecuted, as "all" charges "shall" be prosecuted in a "court of competent jurisdiction." *See id.*

1 102. The charges against Marcus Brokers of alleged violations of Section 230, however,
2 have been prosecuted before the NREC, over Plaintiffs objections, without due process, and
3 without a public trial by an impartial jury of the accused's peers, in hearings of a criminal nature,
4 for determination by the Defendants.

5 103. The NRED Chief Investigator has investigated (or been responsible for the
6 investigations as Chief Investigator) each of the charges prosecuted before the NREC, and has
7 testified and recommended disciplinary actions against Marcus Brokers in these hearings.

8 104. The NREC Defendants, none of whom are lawyers or judges or have received any
9 training as lawyers or judges, purport to sit as a tribunal to hear and determine whether their own
10 regulatory and disciplinary scheme has been violated in any given instance.

11 105. Defendants have thus ascribed themselves legislative, executive, and judiciary
12 powers, all of which they utilize to prevent competition against themselves.

13 106. In the course of the numerous hearings against Marcus Brokers the Defendants
14 have allowed these **criminal** charges to be levied and prosecuted in the Defendants' own tribunal,
15 even though exclusive jurisdiction is given to the State Courts of Nevada to hear and decide all
16 criminal charges. *See Nev. Rev. Stat. § 645.230.*

17 a. The Defendants were informed that their jurisdiction and authority extended
18 only to the determination of *civil* charges, not *criminal*, yet the Defendants heard and
19 decided criminal charges against Marcus Brokers anyway. Defendants simply declared
20 themselves to have criminal enforcement authority, despite the fact that no statute
21 gives them such authority.

22 b. The Defendants have thus abused their positions to investigate, hear or decide
23 criminal charges without any legal authority to do so, in violation of constitutional
24 rights to due process and trial by jury, in the Defendants' combined unlawful effort to
25 stifle interstate commerce and thwart fair competition in their market, and have thus
26 mis-used their offices for their own, individual and private, financial gain and
27 interests.
28

107. Also, while the NREC may have jurisdiction to discipline Nevada-licensed real estate brokers, they do not have jurisdiction to discipline people or entities who are not Nevada-licensed real estate brokers.

a. Both the NRED and the NREC represented to the Federal District of Nevada that the NREC does not have jurisdiction and cannot reach across borders to discipline non-Nevada licensees. *See Marcus & Millichap Real Estate Investment Services of Nevada, Inc. v. Chandra, et al.*, District of Nevada, 2:16-CV-01299 (the “Federal Court Proceedings”).

i. The federal court judge asked the NRED and NREC, through their legal counsel, questions relating to the constitutionality of the Defendants’ scheme. Counsel for the NRED and NREC specifically represented, “Because Nevada as a state, can’t reach its hand out of the state and discipline a California broker. . . . No agency can reach its hand into another jurisdiction and touch another licensee or not licensee.” Counsel for the NRED and NREC, in those same federal court proceedings, continued, “They really don’t have the jurisdiction. None of our state agencies have the jurisdiction [to discipline out-of-state brokers]. . . . Nevada has no – under our statutes and regulations, they just don’t have the ability to reach into another state,”

b. Yet, many, if not most, of the charges prosecuted before and adjudicated by the NREC against Marcus Brokers have been against non-Nevada licensees, despite the NREC’s acknowledgement in federal court that it utterly lacks jurisdiction over these out-of-state Brokers.

III. Defendants Denied Marcus & Millichap Due Process.

108. Not only were the Defendants required to make available and use standard affidavits to provide the bases for complaints against Brokers, pursuant to Nevada Administrative Code § 645.680, Marcus Brokers were entitled to receive copies of the affidavits filed against them, pursuant to the Sixth Amendment of the Constitution (all criminally accused enjoy the right

1 “to be informed of the nature and cause of the accusation [and] to be confronted with the
2 witnesses against him”).

3 109. Additionally, Marcus enjoys the same constitutional rights as its Brokers,
4 including the right to due process under the Fourth, Fifth, and Fourteenth Amendments to the
5 U.S. Constitution.

6 110. Such due process includes, but is not limited to: (1) notice and an opportunity to be
7 heard, (2) the opportunity to confront accusers, (3) the opportunity to call witnesses, (4) that the
8 burden of proof must lie with the prosecutor, (5) the right to discovery, including discovery of all
9 documents or records in the possession or control of the prosecutor that might be relevant to the
10 charges, including the underlying affidavit that provided the bases for the charges as well as the
11 NRED’s investigation reports, (6) the right to speedy and public trials by impartial juries of peers,
12 and (7) the right to not be a witness against oneself in criminal proceedings.

13 111. Defendants have denied Marcus and its Brokers due process by failing to provide
14 notice of the charges against them, either because Defendants did not require complaints to be
15 based upon the required “standard form or affidavit” as required by Nevada Administrative Code
16 § 645.680 or, in any event, by not providing Marcus Brokers copies of any such forms or
17 affidavits if there ever were any.

18 112. By denying Marcus Brokers access to the affidavits on which the complaints
19 against the Brokers are (supposed to be) based, Marcus Brokers have been denied the right to
20 know and confront their accusers.

21 113. Also, the NREC Defendants and Former NREC President Johnson have clear
22 conflicts of interest with Marcus and its Brokers yet stood in judgment against them nonetheless.

23 a. The NREC Defendants and Former NREC President Johnson are (or were) all
24 market participants directly competing with Marcus Brokers, being (or having been)
25 licensed brokers in the state of Nevada.

26 b. Each of them has financial or other interests in limiting competition within
27 their market by keeping out-of-state brokers from doing business in their state.
28

1 c. Additionally, the NREC Defendants are named defendants in the Federal Court
2 Proceedings filed by Marcus referenced above, challenging the constitutionality of the
3 statutes/regulations promulgated and being enforced by the NREC. *See Marcus &*
4 *Millichap Real Estate Investment Services of Nevada, Inc. v. Chandra, et al.*, District
5 of Nevada, 2:16-CV-01299.

6 114. The Defendants' conflicts of interest were raised in motions to have the NREC
7 Commissioners recuse themselves from each hearing in which Marcus Brokers were prosecuted.
8 In every instance, the NREC Defendants denied the motions to recuse, ignoring their clear
9 conflicts of interest.

10 115. These Defendants thus sat in judgment and imposed fines and penalties against
11 Marcus Brokers, despite the clear conflicts of interest in doing so, denying Marcus Brokers their
12 rights to a fair and impartial adjudication of their claims.

13 116. Also, in every case prosecuted before the NREC, Defendants have denied Marcus
14 Brokers the right to call witnesses in their favor.

15 a. In December 2017, counsel for Marcus's Broker called Ms. Vivienne
16 Rakowsky, counsel for the NRED, the NREC, and the NREC Defendants in the
17 Federal Court Proceedings, as a witness to testify about the representations made to
18 the federal court on behalf of the NRED and the NREC regarding the NREC's lack of
19 jurisdiction to discipline out-of-state brokers.

20 i. The NREC Defendants did not allow Ms. Rakowsky to testify concerning
21 any of the representations made to the federal court, and then forced her to
22 be excused as a witness rather than allow her to be questioned further.

23 b. Similarly, at the same hearing, counsel for Marcus's broker called an expert
24 witness, Mr. Alan Wallace, to testify to the unconstitutional effect on interstate
25 commerce and unlawful violations of antitrust laws the Defendants' illegal scheme has
26 created.

27 i. The NREC Defendants did not allow Mr. Wallace to testify to any question
28 asked of him other than his basic background questions.

- 1 ii. The NREC Defendants sustained every objection, to every question,
2 until—just as they did with Ms. Rakowsky—they forced him to be excused
3 as a witness rather than allow him to be questioned further.
- 4 iii. The NREC Defendants made it very clear that Marcus Brokers would not
5 be permitted to present their defenses in any way other than as specified by
6 the NREC Defendants.
- 7 iv. Defendant Reiss specifically threatened, “I know though that what we need
8 to do is hear this matter and if you’re not going to do it the way that I’m
9 suggesting, it’s going to be very difficult.”
- 10 v. After the NREC Defendants made unequivocally clear that the broker
11 would not be able to present his defense, counsel for the broker requested
12 to make an offer of proof in order to preserve the record for appeal.
- 13 vi. Incredibly, the NREC Defendants refused to allow even the offer of proof,
14 denying the right to simply preserve a record for appeal.
- 15 vii. Ms. Rowe, counsel for the broker, specifically asked, “What I would like to
16 do is make an offer of proof.” Defendant Reiss responded, “No.” Ms.
17 Rowe asked again, “May I make an offer of proof?” And Defendant Reiss
18 responded again, “No.”
- 19 viii. Defendant Reiss excused Mr. Wallace, without permitting any further
20 questions or offers of proof, then forced the parties to move to closing
21 statements—forcibly resting the broker’s case in chief—even though the
22 broker had “numerous” additional witnesses to call in his defense.
23 Defendant Reiss stated, “In that case, we’re going to move to closing
24 statements.” Ms. Rowe stated, “I want to be clear for the record, I have
25 numerous witnesses.” Defendant Reiss replied, “I thought I made myself
26 clear.” He then instructed a four-minute time limit be imposed on closing
27 arguments.
- 28

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1 c. Marcus Brokers were thus denied the opportunity to call witnesses to testify on
2 their behalf.

3 d. Notably, in contrast to the NREC Defendants denying Marcus Brokers' rights
4 to call witnesses in their defense, the NREC Defendants allowed the prosecutor to call
5 Marcus's legal counsel as a fact witness, over objection, and forced him to testify even
6 though his only connection to these cases is as legal counsel.

7 e. The NREC Defendants engaged in the same, or similar, conduct throughout all
8 of the proceedings against Marcus Brokers, denying them the right to call witnesses or
9 refusing to allow witnesses to answer questions.

10 117. In many cases prosecuted before the NREC, Defendants have unfairly shifted the
11 burden of proof from the prosecution to Marcus Brokers. Defendants have done so by making
12 negative inferences against Marcus Brokers when the prosecution has failed to present evidence,
13 and by finding against Marcus Brokers when there is no evidence to support the finding, when the
14 NREC should have found the prosecution failed to meet its burdens.

15 118. Indeed, the NREC Defendants and Former NREC President have made findings
16 and conclusions, and imposed penalties, against Marcus Brokers which were unsupported by
17 evidence or even directly contradicted by evidence, including on recommendations by Defendant
18 Holle.

19 a. The civil statute under which Marcus Brokers were prosecuted before the
20 Defendants authorized the NREC to impose administrative fines only equal to the
21 greater of \$5,000 or the amount of the commission actually received by the individual
22 Brokers in connection with the subject transaction. *See Nev. Rev. Stat. § 645.235.*

23 b. In several cases in which Marcus Brokers were prosecuted, the Defendants
24 imposed hundreds of thousands of dollars in fines and penalties based on allegations
25 of commissions received, when no such commissions were ever actually received and
26 there was no evidence of any such commissions ever actually being received.

27 c. In at least one case, the Defendants imposed hundreds of thousands of dollars
28 in fines even after acknowledging they did not know the amount of the commission

1 actually received. In other words, there was no evidence to support the amount of the
2 fine, the Defendants were aware of this lack of evidence, and the Defendants imposed
3 the fine any way.

4 d. In several cases, the Defendants imposed fines after precluding Marcus
5 Brokers from even addressing the questions of the amount of the commissions actually
6 received.

7 e. The Defendants have thus utilized their positions as commissioners on the
8 NREC to make findings and impose fines and penalties in clear violation and in excess
9 of their jurisdiction and authority, in their combined unlawful effort to stifle interstate
10 commerce and thwart fair competition in their market, and have thus mis-used their
11 positions for their own, individual and private, financial gain.

12 119. Further, the Defendants have made findings and conclusions, and imposed
13 penalties, against Marcus Brokers even after acknowledging on the record that the required *mens*
14 *rea* requirements had not been met.

15 a. The civil statute under which Marcus Brokers were prosecuted before the
16 Defendants required a finding that the Brokers had “knowingly” violated the statute.
17 *See Nev. Rev. Stat. § 645.235.*

18 b. In at least one case in which a Marcus Broker, was prosecuted, the Defendants
19 acknowledged on the record that the broker being prosecuted did not “knowingly”
20 engage in any prohibited conduct. Yet, the Defendants proceeded to find the statute
21 had been violated and imposed penalties against the Broker.

22 c. In several cases, the Defendants imposed fines after precluding Marcus
23 Brokers from even addressing the questions of the amount of commissions actually
24 received.

25 d. The NREC Defendants and Former NREC President have thus utilized their
26 positions as commissioners on the NREC to make findings and impose fines and
27 penalties in clear violation and in excess of their jurisdiction and authority, in their
28 combined unlawful effort to stifle interstate commerce and thwart fair competition in

1 their market, and have thus mis-used their public office for their own, individual and
2 private, financial gain.

3 120. Moreover, the Defendants have denied Marcus Brokers rights of due process,
4 including fair and impartial adjudication of the claims asserted against them, rights to call
5 witnesses and present evidence on their respective behalves, the right to appear through counsel
6 and/or to not testify in criminal proceedings, and the right to have criminal charges determined by
7 juries of their peers.

8 a. In the civil and criminal proceedings in which Marcus Brokers have been
9 prosecuted before the Defendants, the burden of proof has rested with the State of
10 Nevada. Yet, the Defendants repeatedly made negative inferences against Marcus
11 Brokers due to the lack of evidence. For example, in December 2017, a hearing was
12 held before the Defendants on charges asserted against five (5) Marcus Brokers. The
13 complaints served on these Brokers “specifically informed” these parties “that [they]
14 have the right to appear and be heard in [their defense], either personally or through
15 [their] counsel of choice.” When these parties exercised their rights to appear through
16 counsel, the Defendants made negative findings against these parties due to their
17 “failure” to appear and give testimony.

18 b. The Fifth Amendment of the U.S. Constitution prohibits any person from
19 being compelled to be a witness against himself in any criminal case.

20 c. The charges against Marcus Brokers included *criminal* charges, as alleged
21 above.

22 d. The Defendants violated the constitutional rights of Marcus Brokers by making
23 negative inferences against them for their “failures” to testify at the hearings in which
24 *criminal* charges were being prosecuted against them.

25 e. Also, the Fifth and Fourteenth Amendments of the U.S. Constitution prohibits
26 depriving a person of life, liberty, or property without due process of law.

27 f. “The due process clauses in our constitutions assure an accused the right to
28 introduce into evidence any testimony or documentation which would tend to prove

1 the defendant's theory of the case." *Vipperman v. State*, 96 Nev. 592, 596 614 P.2d
2 532, 534 (Nev. 1980) (citations omitted).

3 g. Yet the Defendants repeatedly and on numerous occasions refused to permit
4 Marcus, its Brokers, or their legal counsel to present evidence, make arguments, or
5 otherwise defend against the claims asserted against them, in violation of their
6 constitutional rights to due process.

7 h. The Sixth and Fourteenth Amendments to the U.S. Constitution guaranty the
8 rights of criminal defendants to a public trial, to an impartial jury, and to know their
9 accusers.

10 i. As previously alleged, the charges against Marcus Brokers included *criminal*
11 charges.

12 j. Yet, the parties prosecuted before the Defendants were given no public trial, no
13 impartial jury (or, no jury whatsoever, for that matter), and no knowledge of their
14 accusers, in violation of their constitutional rights. In addition, Defendants knowingly
15 permitted the prosecution to withhold potentially exculpatory evidence from Marcus
16 Brokers, in violation of their constitutional rights.

17 k. The Defendants have thus utilized their positions as commissioners on the
18 NREC to make findings and impose fines and penalties in clear violation of
19 constitutional rights, in their combined unlawful effort to stifle interstate commerce
20 and thwart fair competition in their market and have thus mis-used their public office
21 for their own, individual and private, financial gain.

22 121. Most recently, the Defendants—acting by and through Defendant Holle—sent
23 notice to one Marcus Broker that the Broker had been found in violation of Defendants' unlawful
24 scheme, and a fine imposed against that Broker, without any hearing or due process of law
25 whatsoever.

26 122. The hearing and adjudicative process created and employed by the Defendants is
27 thus a fraud and a sham wherein the Defendants seek to give the appearance of a fair and lawful
28 administrative tribunal but in fact is an unlawful and exploitive enterprise by which the

1 Defendants are attempting to stifle interstate commerce and thwart fair competition in their
2 market, mis-using their public office for their own, individual and private, financial gain.

3 **IV. Defendants Targeted Marcus and its Brokers to "Send a Message," Causing**
4 **Significant Harm and Damages to Marcus and its Brokers.**

5 123. In every instance in which the Defendants have rendered a decision on a charge
6 levied against Marcus Brokers, the Defendants have found that the Defendants' own regulatory
7 and disciplinary scheme has been violated, even when the Defendants have specifically
8 acknowledged on the record that the requisite *mens rea* element of the offense has not been
9 established.

10 a. The Defendants have done so for their own, individual and private financial
11 gain, mis-using their public office, in an effort to stifle interstate commerce and thwart
12 fair competition in their market and have thus mis-used their public office for their
13 own, individual and private, financial gain.

14 124. The Defendants have, to date, imposed fines and penalties against Marcus Brokers,
15 totaling more than seven hundred thousand dollars (\$700,000.00), which Marcus is liable to pay
16 on behalf of its Brokers.

17 a. The Defendants have done so for their own, individual and private financial
18 gain, mis-using their public office, in an effort to stifle interstate commerce and thwart
19 fair competition in their market and have thus mis-used their public office for their
20 own, individual and private, financial gain.

21 125. Marcus has been damaged and harmed, not only by the more than \$700,000.00 in
22 fines and penalties imposed by the Defendants in the course of their illegal scheme, but also by
23 lost profits and business opportunities resulting from the significant and burdensome time Marcus
24 and its Brokers have been compelled to devote to fighting against the Defendants' illegal scheme
25 as well as hundreds of thousands of dollars in attorneys' fees and costs incurred by Marcus, for
26 itself and on behalf of its Brokers, defending against and fighting the Defendants'
27 unconstitutional and otherwise unlawful regulatory and disciplinary scheme.
28

126. Defendants have taken the aforementioned actions, and others to come to light in discovery, against Marcus and its Brokers to send a message that Defendants will protect in-state Nevada-licensed brokers by stopping interstate commerce and fair competition at Nevada's borders.

a. For example, in December 2017, when discussing the penalties to be imposed in the charges levied against Marcus's broker, Gordon Robert Allred, NRED Chief Investigator Holle recommended a fine of \$497,760, plus costs, be imposed by the NREC. The NREC Defendants discussed possibly imposing a fine in an amount less than the \$497,760 recommended by Defendant Holle, during which Defendant Opatik made clear she would not agree to the lesser amount being discussed, saying the lesser amount doesn't "even send[] the message." Defendant Barrett continued the discussion, saying, "So do I think that a message needs to be sent, absolutely. Do I think \$497,760 is the message? Yeah, I think pretty strongly that that might be the message"

A STATEMENT ON THE DEFENDANTS' NON-IMMUNITY

127. Marcus & Millichap understands, without conceding, that the Defendants might be considered public officials—despite their status as market participants and competitors to Marcus Brokers—and thus might attempt to invoke judicial or other immunity. The immunity afforded public officials generally, however, has certain limits including extending only to those officers of the state who exercise due care in the exercise of their authority.

128. Even if the Defendants could be considered public officials, Defendants have not exercised due care but have instead mis-used their offices for their own personal gains and interests, utilizing fraudulent conduct to harm Marcus and its Brokers in the Defendants' unlawful efforts to stifle interstate commerce and thwart fair competition.

129. No immunity is afforded individuals with respect to intentional torts or bad-faith misconduct, both of which are expressly at issue in this matter.

130. With respect to the antitrust claims set forth herein, specifically, because the Defendants are market participants and competitors to Marcus Brokers, they are not afforded

1 state-action immunity because the Defendants' restraints on inter-state commerce and fair
2 competition are not clearly articulated nor affirmatively expressed as state policy, and whatever
3 policy basis there might be for such restraints is not actively supervised by the state.

4 131. Defendants, despite their status as public officers or employees, are not immune
5 from personal liability because no Nevada law clearly articulates the policy being furthered by the
6 Defendants' unlawful endeavors (and, in fact, NREC's policy directly violates Nevada law as
7 enacted by the legislature), because no state official actively supervised or supervises the
8 Defendants in their unlawful endeavors, and because the Defendants have utilized their cloaks of
9 State authority to engage in a criminal enterprise for which no state immunity is available.

10 132. "[P]ublic officials can be held individually liable for actions taken while holding
11 public office and/or misuse of their public office." *See LaFlamboy v. Landek*, 587 F.Supp. 2d
12 194, 937 (N.D. Ill. 2008) (citing *United States v. Warner*, 498 F.3d 666, 696 (7th Cir. 2007),
13 *United States v. Edmond*, 935 F.2d 1511, 1512 (7th Cir. 1991).

14 133. The individual Defendants have been sued in their individual capacities as having
15 utilized and misused their employment, positions, or authorities, gone far beyond the scope of
16 their offices, and engaged in activity not related to their positions, when they pursued their
17 unlawful endeavors for their own private and personal gains. They are not entitled to any
18 immunity that otherwise might have been afforded them. The NREC and NRED have each been
19 named as a Defendant in this action for purposes of relief only. Marcus & Millichap seeks
20 equitable relief such as injunctions, disgorgement, and reorganization against and affecting the
21 NRED and NREC. The NRED and NREC are, thus, named as Defendants in accordance with
22 Nevada Revised Statute 41.031.

23 134. All conditions precedent for the prosecution of this action have been satisfied.

24 **FIRST CAUSE OF ACTION**
25 **(Violation of Federal Antitrust Laws)**

26 135. Marcus & Millichap hereby incorporates by this reference each of the foregoing
27 allegations and restates the same as though set forth fully herein.
28

136. The federal Sherman Antitrust Act prohibits, and deems criminal, all combinations or conspiracies to restrain or monopolize interstate commerce, or to attempt to restrain or monopolize interstate commerce, as follows:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make a contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine . . . or by imprisonment . . . or by both said punishments, in the discretion of the court.

15 U.S.C. § 1.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine . . . or by imprisonment . . . or by both said punishments, in the discretion of the court.

15 U.S.C. § 2.

137. **Combination and Conspiracy:** The Defendants have each combined and conspired to restrain or monopolize interstate commerce—namely interstate real estate brokerage—or attempted to restrain or monopolize interstate commerce, by and through the conduct alleged above including but not limited to:

a. Enacting, maintaining, and enforcing rules, regulations, and other restrictions on interstate commerce exceeding the scope and authority permitted to Defendants, in violation of the Commerce Clause of the U.S. Constitution, which vests power to regulate interstate commerce solely and exclusively with the United States Congress;

b. Defendants' email communications reveal their motive in amending the applicable regulations was "to prohibit . . . out of state licensees listing Nevada property for Nevada property owners whether the property owners are residents of Nevada or not," and also to prohibit out-of-state licensees from representing "Nevada residents in the purchase of Nevada real estate," because out-of-state brokers had been and would be "taking business away from our Nevada licensees."

1 c. The Defendants combined and conspired to exceed their authority as
2 prescribed by statute to limit the circumstances in which out-of-state brokers may
3 participate in the Nevada real estate market, when applicable statutes do not provide
4 for any such limits.

5 d. The Defendants then combined and conspired to amend the Nevada regulations
6 without complying with the requirements of the Nevada Administrative Procedures
7 Act.

8 e. The Defendants further combined and conspired to target Marcus Brokers—
9 without complaint from any member of the general public, the genesis of the targeting
10 of Marcus & Millichap having come from Defendant Johnson, and despite clear
11 conflicts of interests as the NREC Defendants are direct competitors with Marcus &
12 Millichap and are defendants in ongoing court proceedings brought against them by
13 Marcus & Millichap (the Federal Court Proceedings)—for investigation and
14 discipline, to deny Marcus Brokers due process of law and other constitutional rights,
15 and to impose fines and other disciplinary actions not supported by evidence, not
16 permitted by law, and not in accordance with the victim broker's constitutional rights.

17 f. The Defendants combined and conspired to enter findings and conclusions and
18 impose fines and penalties against Marcus Brokers in violation of those parties'
19 constitutional rights and protections against self-incrimination in criminal
20 proceedings;

21 g. The Defendants combined and conspired to enter findings and conclusions and
22 impose fines and penalties against Marcus Brokers without affording these parties
23 constitutional rights to due process, fair and public trials, juries of their peers;

24 h. The Defendants combined and conspired to enter findings and conclusions and
25 impose fines and penalties against Marcus Brokers which are not authorized by statute
26 and are not supported by evidence or are even contradicted by the evidence; and

27 i. The Defendants combined and conspired to operate their illegal and unlawful,
28 fraudulent scheme by which the Defendants mis-use their public offices for their own,

individual and private gains and interests by taking the foregoing actions with the intent to and for the purpose of stifling interstate commerce and thwarting fair competition in their business market.

138. The Defendants' combined efforts and conspiracies to create, prosecute, enforce, and uphold their illegal scheme is a combination and conspiracy to restrain trade and commerce in violation of the Sherman Act, as it is an agreement, conspiracy, or combination between two or more entities—including each of the NREC Defendants, Former NREC President Johnson, and NRED Chief Investigator Holle, if not also between the NRED and the NREC—to restrain trade and commerce.

139. **The Relevant Markets:** The Defendants' combinations and conspiracies affect commerce in the following relevant markets:

a. Out-of-state brokers are not permitted to represent any Nevada resident in connection with the marketing and sale of that Nevada resident's Nevada real estate;

b. Out-of-state brokers are not permitted to represent any Nevada resident in connection with the purchase of any Nevada real estate; and

c. Out-of-state brokers are permitted only to represent non-Nevada residents in connection with the purchase of Nevada real estate if the out-of-state broker cooperates with an in-state Nevada broker.

d. Defendants have thus excluded the Nevada real estate market from the national and international real estate markets, isolating this market to the sole benefit of in-state brokers and to the significant harm of out-of-state brokers and property owners and consumers; thus, competition and commerce has been restrained and stifled by Defendants in the market for real estate brokerage services within the state of Nevada, which also has the ancillary impact of restraining commerce and stifling competition in the overall Nevada real estate market.

140. **Restraint on Trade and Commerce Among the States:** The Defendants' regulatory scheme is an illegal and unreasonable restraint of trade and commerce, protecting in-state Nevada licensed brokers from competing with out-of-state brokers, as it:

1 a. Prohibits out-of-state brokers from obtaining Nevada real estate licenses unless
2 the broker maintains a physical office in Nevada and does all work relating to Nevada
3 real estate from that physical office (thus requiring the brokers to be in-state brokers
4 rather than out-of-state), and

5 b. Prohibits out-of-state brokers from doing any brokerage business within
6 Nevada except in the most limited circumstances (namely, representing out-of-state
7 buyers of Nevada real estate, and—even then—only if the out-of-state broker obtains a
8 cooperative certificate and associates with an in-state broker).

9 c. Out-of-state brokers are not allowed to represent sellers of Nevada real estate.

10 d. Out-of-state brokers are not allowed to represent Nevada residents buying
11 Nevada real estate.

12 e. There exists a demonstrable nexus between the Defendants' unlawful activities
13 and interstate commerce, as Defendants are unlawfully preventing out-of-state brokers
14 from doing business in the State of Nevada.

15 141. The Defendants have perpetuated their illegal scheme in an effort to monopolize
16 the Nevada real estate industry on behalf of all similarly situated in-state Nevada-licensed real
17 estate brokers to the detriment and exclusion of all out-of-state brokers.

18 142. The Defendants' unlawful restraints are unreasonable restraints of trade per se as
19 well as under a rule of reason analysis. The Defendants acted with intent to harm or restrain
20 competition. The Defendants have caused actual harm to competition. And the restraints are
21 unreasonable considering any justifications or pro-competitive effects of the restraint. Any
22 justifications for restricting out-of-state brokerage of Nevada real estate can easily be satisfied by
23 less restrictive means, such as requiring out-of-state brokers to submit to the jurisdiction of
24 Nevada state courts and the NRED and to associate or cooperate with Nevada licensees who will
25 ensure transactions are completed in accordance with local laws and rules.

26 143. The restraints are broad-sweeping and apply—as written—to all out-of-state
27 brokers, affecting the entire real estate industry and not just the plaintiffs.
28

1 144. **Antitrust Injury**: The harm caused by the Defendants is not just to a single
2 competitor, Marcus and its Brokers, but to the competitive process and to competition itself, as all
3 out-of-state brokers are affected by Defendants' unlawful scheme.

4 145. The Defendants' illegal scheme has harmed the Marcus Entities and Brokers,
5 including Marcus & Millichap, by among other things the Defendants' repeated investigations,
6 prosecutions, and disciplinary actions, including but not limited to loss of goodwill and
7 reputation, lost productivity and profits, interference with business relations and contracts, the
8 imposition of more than \$700,000 in fines and penalties, and unreasonably restricted—or
9 altogether prohibited—access to customers and business.

10 146. The Defendants' illegal scheme has harmed the real estate brokerage industry as a
11 whole, including Marcus and its Brokers, by among other things monopolizing the Nevada real
12 estate industry in favor of in-state Nevada brokers to the exclusion of out-of-state brokers.

13 147. Consumers, including Nevada property owners looking to sell their properties and
14 Nevada resident potential buyers who might purchase Nevada real estate, have been harmed by
15 the Defendants' illegal scheme by among other things being deprived of the right to utilize the
16 brokerage services of out-of-state brokers and decreased competition among brokers resulting
17 therefrom.

18 a. Owners of Nevada real estate can only use resident Nevada licensed brokers to
19 market and sell their Nevada properties.

20 b. Nevada residents seeking to purchase Nevada real estate can only use resident
21 Nevada licensed brokers to purchase Nevada properties.

22 c. Consumers pay higher commissions to in-state Nevada brokers because of the
23 decreased competition in the brokerage industry.

24 d. Consumers cannot retain brokers who may have special education, knowledge,
25 experience, or expertise; greater access to potential buyers; greater resources,
26 marketing capabilities, or proprietary technology or business techniques; or are
27 otherwise preferred; because those brokers are excluded from the market.
28

1 e. Brokers who service commercial real estate markets often must have particular
2 expertise and are called upon to guide consumers through complex transactions
3 involving numerous properties in more than one state. For example, Plaintiff Gordon
4 Allred is the preeminent broker of hospitality properties such as hotels in all of Marcus
5 & Millichap, and he may well be the preeminent hospitality broker in the entire
6 country. Property owners specifically retain Mr. Allred to sell their hospitality
7 properties because of his skills, expertise, reputation, and name recognition. Buyers of
8 hospitality properties specifically look for properties with Mr. Allred's name
9 associated with it, because of his reputation. By the Defendants' conduct, however,
10 Mr. Allred is precluded from representing any seller of Nevada real estate, even
11 though he may be the nation's foremost expert in brokering hospitality properties.
12 Consumers and property owners in Nevada are denied access to the brokers of their
13 choice as a result of Defendants' unlawful scheme.

14 148. The Clayton Antitrust Act grants a private, civil right of action to "any person who
15 shall be injured in his business or property by reason of anything forbidden in the antitrust laws,"
16 and such person "may sue therefor in any district court of the United States in the district in
17 which the defendant resides or is found or has an agent, without respect to the amount in
18 controversy" 15 U.S.C. § 15(a).

19 a. While damages, interest, costs, and fees are not recoverable under this specific
20 statute against local government, officials, or employees acting in their official
21 capacity (*see* 15 U.S.C. § 35), "Any person, firm, corporation, or association shall be
22 entitled to sue for and have injunctive relief, in any court of the United States having
23 jurisdiction over the parties, against threatened loss or damage by a violation of the
24 antitrust laws" *See* 15 U.S.C. § 26.

25 149. Because these Defendants have mis-used their public offices and have acted
26 outside the scope of any authority or jurisdiction afforded to them or to the NREC/NRED, they
27 are not protected by the limitations on remedies available to injured persons against public
28 officials or employees *acting in their official capacities* set forth in 15 U.S.C. § 35. Marcus &

1 Millichap should thus be entitled to all remedies and damages available to it, including without
2 limitation damages, interest, costs and fees.

3 a. Accordingly, Marcus & Millichap is entitled to an award of damages against
4 the Defendants for, among other things:

5 i. The more than \$700,000.00 in fines and penalties imposed by the
6 Defendants in the course of their illegal scheme, trebled as permitted by the
7 federal antitrust laws;

8 ii. The attorneys' fees and costs incurred defending against the
9 investigations, prosecutions, disciplinary actions, and court proceedings and
10 appeals necessitated by, relating to, or resulting from the Defendants' scheme,
11 trebled as actual damages, as permitted by the federal antitrust laws;

12 iii. The Plaintiffs' lost profits and business opportunities, including (i) lost
13 profits and opportunities resulting from the significant and burdensome time
14 Marcus and its Brokers have been compelled to devote to fighting against the
15 Defendants' illegal scheme, and (ii) lost profits and opportunities resulting
16 from Plaintiffs not being allowed to do business in Nevada without being
17 subject to the Defendants' illegal scheme, trebled as actual damages, as
18 permitted by the federal antitrust laws;

19 iv. A disgorgement of all proceeds received by each of the Defendants as a
20 result of their illegal restraints on trade, including but not limited to
21 commissions they received in the course of their business(es) that might have
22 gone to any out-of-state broker had the out-of-state broker been permitted to do
23 business in this state without the Defendants' illegal scheme; and

24 v. Attorneys' fees and costs incurred pursuing this action.

25 150. In any event, even if damages against these Defendants are limited under 15
26 U.S.C. § 35, Marcus & Millichap is entitled to injunctive and equitable relief including but not
27 limited to an order from this court:
28

a. Declaring the statutes and regulations that provide the foundation for the Defendants' scheme illegal in violation of federal antitrust laws;

b. Vacating all prior findings, conclusions, penalties, fines, and other orders or decisions entered by the Defendants against Marcus Brokers;

c. Enjoining any and all pending or future proceedings before these Defendants or the NREC;

d. Enjoining these Defendants and any or all others from investigating, prosecuting, adjudicating, or taking any disciplinary actions, against Marcus Brokers for alleged violations of the Defendants' illegal scheme; and

151. Reorganizing the NREC and prohibiting these Defendants from taking any part in the NREC or its investigations, prosecutions, hearings, or decisions.

152. **State-Action Immunity Does Not Apply:** The U.S. Supreme Court has held that when—as is the case with the NREC—a controlling number of the decision makers on a state licensing board are active participants in the occupation regulated by the board, then state-action immunity applies only if the restraint is “one clearly articulated and affirmatively expressed as state policy” and the policy is “actively supervised by the state.” *See North Carolina State Bd. of Dental Examiners v. F.T.C.*, 135 S. Ct. 1101, at 1111, 191 L.Ed.2d 35 (2015). “Limits on state-action immunity are most essential when the State seeks to delegate its regulatory power to active market participants, . . . active market participants cannot be allowed to regulate their own markets free from antitrust accountability. *See id.* “[P]rohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy.” *See id.* “[A] state board on which a controlling number of decision makers are active participants in the occupation the board regulates must satisfy [the] active supervision requirement.” *See id.* at 1114.

153. Each of the NREC Defendants and Former NREC President is an active market participant, competing with Marcus Brokers, in the real estate industry they regulate.

a. To be a commissioner on the NREC, one “must have been actively engaged in business as a Nevada real estate broker for at least three (3) years preceding

1 appointment or a Nevada real estate broker/salesman for at least five (5) years
2 preceding appointment.

3 b. Defendant Reiss is an actively licensed real estate broker associated with
4 Coldwell Banker Premier Realty, doing business in the State of Nevada.

5 c. Defendant Barrett is an actively licensed real estate broker associated with
6 Barrett & Co, Inc, doing business in the State of Nevada.

7 d. Defendant Capurro is an actively licensed real estate broker associated with
8 Capurro & Reid Real Estate, doing business in the State of Nevada.

9 e. Defendant Schwartz is an actively licensed real estate broker associated with
10 Coldwell Banker Premier Realty, doing business in the State of Nevada.

11 f. Defendant Opatik was an actively licensed real estate broker associated with
12 Realty Executives in Action, doing business in the State of Nevada, while Opatik was
13 a commissioner with the NREC.

14 g. Former NREC President Johnson is and was at times relevant hereto an
15 actively licensed real estate broker associated with the Johnson Group, doing business
16 in the State of Nevada.

17 154. The unconstitutional restraints on trade and commerce illegally enacted and
18 selectively enforced against Marcus Brokers by the Defendants is not “articulated and
19 affirmatively expressed as state policy.” Indeed, the protectionist restraint flies in the face of
20 clearly articulated state policy to break down barriers to free trade and commerce. *See, e.g.,*
21 Nevada Unfair Trade Practice Act, Nev. Rev. Stat. § 598A.030(1) (clearly describing the Nevada
22 Legislature’s findings in favor of free and open markets); Nevada Senate Bill 69 (2017); Nev.
23 Rev. Stat. § 622.530. The licensing requirements at issue here are not mandated by Nevada state
24 law and go beyond the regulatory authority granted to the NREC by the State.

25 155. The restraints are not subject to state supervision. Indeed, Defendants enacted the
26 amendments to the regulation without abiding by any of the procedures and safeguards required
27 by Nevada’s Administrative Procedures Act, as discussed above, preventing any and all checks-
28 and-balances or state supervision that might have prevented Defendants’ illegal scheme. The

NREC is not a prototypical state agency but is a “specialized board dominated by active market participants” comprised of actively-licensed real estate brokers competing with Marcus Brokers, and therefore must be subject to active supervision by the State.

SECOND CAUSE OF ACTION

(Violation of Nevada Antitrust Laws / Nevada Unfair Trade Practice Act)

156. Marcus & Millichap hereby incorporates by this reference each of the foregoing allegations and restates the same as though set forth fully herein.

157. Nevada’s Legislature has enacted antitrust laws that are to be “construed in harmony with prevailing judicial interpretations of the federal antitrust statutes.” Nev. Rev. Stat. § 598A.050.

158. Nevada’s antitrust statute is codified in Chapter 598A of the Nevada Revised Statutes and is known as the Nevada Unfair Trade Practice Act.

159. Consistent with the federal antitrust laws, the Nevada Legislature found:

(a) The free, open and competitive production and sale of commodities and services is necessary to the economic well-being of the citizens of the State of Nevada.

(b) The acts of persons which result in the restraint of trade and commerce:

(1) Act to destroy free and open competition in our market system and, thereby, result in increased costs and the deterioration in quality of commodities and services to the citizens of the State of Nevada.

(2) Result in economic hardships in the form of increased consumer prices and increased taxes upon many citizens of the State of Nevada least able to bear such increased costs.

Nev. Rev. Stat. § 598A.030(1).

160. The Nevada Legislature also enacted the policy of the state toward open markets, as follows:

It is the policy of this state and the purpose of this chapter to:

(a) Prohibit acts in restraint of trade or commerce, except where properly regulated as provided by law.

1 **(b) Preserve and protect the free, open and competitive nature of our market**
 2 **system.**

3 **(c) Penalize all persons engaged in such anticompetitive practices to the full**
 4 **extent allowed by law, in accordance with the penalties provided herein.**

5 Nev. Rev. Stat. § 598A.030(2).

6 161. The Nevada Unfair Trade Practice Act prohibits contracts, combinations, and
 7 conspiracies in restraint of trade. Nev. Rev. Stat. § 598A.060(1).

8 a. Such prohibited conduct includes “raising, depressing, fixing, pegging or
 9 stabilizing the price of any commodity or service.” *See id.* at (1)(a).

10 i. Defendants have engaged in price fixing by unlawfully excluding
 11 competitors from doing business in the Defendants’ market, allowing
 12 Defendants and similarly situated in-state brokers to charge more for their
 13 services than a free and open market would have allowed.

14 b. Such prohibited conduct also includes “Monopolization of trade or commerce
 15 in this State, including, without limitation, attempting to monopolize or otherwise
 16 combining or conspiring to monopolize trade or commerce in this State.

17 i. Defendants have attempted to monopolize or otherwise combined and
 18 conspired to monopolize trade or commerce in this State, for themselves and
 19 similarly situated in-state brokers, by excluding out-of-state brokers from
 20 doing business in Nevada in all but the most limited circumstances.

21 162. The Nevada Unfair Trade Practice Act grants a private right of civil action to
 22 “[a]ny person threatened with injury or damage to his or her business or property by reason of a
 23 violation of any provision of this chapter,” or “[a]ny person injured or damaged directly or
 24 indirectly in his or her business or property by reason of a violation of the provisions of this
 25 chapter.” Nev. Rev. Stat. § 598A.210(1) and (2).

26 163. Persons threatened with injury or damage by reason of a violation of this statute
 27 may sue for injunctive relief. Nev. Rev. Stat. § 598A.210(1).
 28

1 164. Persons actually injured or damaged, directly or indirectly, by reason of a violation
2 of this statute “shall recover treble damages, together with reasonable attorney fees and costs.”
3 Nev. Rev. Stat. § 598A.210(2).

4 165. As set forth above in connection with Plaintiffs’ First Cause of Action, the
5 Defendants’ illegal scheme has harmed the Marcus Entities and Brokers, including Marcus &
6 Millichap, by among other things the Defendants’ repeated investigations, prosecutions, and
7 disciplinary actions, including but not limited to loss of goodwill and reputation, lost productivity
8 and profits, interference with business relations and contracts, the imposition of more than
9 \$700,000 in fines and penalties, and unreasonably restricted—or altogether prohibited—access to
10 customers and business.

11 166. The Defendants’ illegal scheme has harmed the real estate brokerage industry as a
12 whole, including Marcus and its Brokers, by among other things monopolizing the Nevada real
13 estate industry in favor of in-state Nevada brokers to the exclusion of out-of-state brokers.

14 167. Consumers, including Nevada property owners looking to sell their properties and
15 Nevada resident potential buyers who might purchase Nevada real estate, have been harmed by
16 the Defendants’ illegal scheme by among other things being deprived of the right to utilize the
17 brokerage services of out-of-state brokers and decreased competition among brokers resulting
18 therefrom.

19 a. Owners of Nevada real estate can only use resident Nevada licensed brokers to
20 market and sell their Nevada properties.

21 b. Nevada residents seeking to purchase Nevada real estate can only use resident
22 Nevada licensed brokers to purchase Nevada properties.

23 c. Consumers pay higher commissions to in-state Nevada brokers because of the
24 decreased competition in the brokerage industry.

25 d. Consumers cannot retain brokers who may have special education, knowledge,
26 experience, or expertise; greater access to potential buyers; greater resources,
27 marketing capabilities, or proprietary technology or business techniques; or are
28 otherwise preferred; because those brokers are excluded from the market.

1 e. Brokers who service commercial real estate markets often must have particular
2 expertise and are called upon to guide consumers through complex transactions
3 involving numerous properties in more than one state. By the Defendants' conduct,
4 consumers in Nevada are denied access to these brokers.

5 168. Marcus & Millichap is entitled to an award of damages against the Defendants for,
6 among other things:

7 a. The more than \$700,000.00 in fines and penalties imposed by the Defendants
8 in the course of their illegal scheme, trebled as permitted by the Nevada antitrust laws;

9 b. The attorneys' fees and costs incurred defending against the investigations,
10 prosecutions, disciplinary actions, and court proceedings and appeals necessitated by,
11 relating to, or resulting from the Defendants' scheme, trebled as actual damages, as
12 permitted by the Nevada antitrust laws;

13 c. The Plaintiffs' lost profits and business opportunities, including (i) lost profits
14 and opportunities resulting from the significant and burdensome time Marcus and its
15 Brokers have been compelled to devote to fighting against the Defendants' illegal
16 scheme, and (ii) lost profits and opportunities resulting from Plaintiffs not being
17 allowed to do business in Nevada without being subject to the Defendants' illegal
18 scheme, trebled as actual damages, as permitted by Nevada's antitrust laws;

19 d. A disgorgement of all proceeds received by each of the Defendants as a result
20 of their illegal restraints on trade, including but not limited to commissions they
21 received in the course of their business(es) that might have gone to any out-of-state
22 broker had the out-of-state broker been permitted to do business in this state without
23 the Defendants' illegal scheme; and

24 e. Attorneys' fees and costs incurred pursuing this action, as permitted by the
25 Nevada antitrust laws.

26 169. Marcus & Millichap is entitled to injunctive relief including but not limited to an
27 order from this court:
28

- a. Declaring the regulations that provide the foundation for the Defendants' scheme illegal in violation of Nevada's antitrust laws;
- b. Vacating all prior findings, conclusions, penalties, fines, and other orders or decisions entered by the Defendants against Marcus Brokers;
- c. Enjoining any and all pending or future proceedings before these Defendants or the NREC;
- d. Enjoining these Defendants and any or all others from investigating, prosecuting, adjudicating, or taking any disciplinary actions, against Marcus Brokers for alleged violations of the Defendants' illegal scheme; and
- e. Prohibiting these Defendants from taking any part in the NREC or its investigations, prosecutions, hearings, or decisions.

170. The Nevada Unfair Trade Practice Act does not apply to administrative agencies of the State of Nevada which have jurisdiction over the subject matter of their actions. *See Nev. Rev. Stat. § 598A.040.* While this statute may not apply to the NREC or the NRED, as agencies of the State, the statute does apply to each of the individual Defendants in their personal capacities. The individual Defendants hereto have been named in their individual capacities for their actions far exceed the scope of any authority given to them on account of their employment or positions with the NREC or NRED, and they have acted outside the bounds of any immunity or protection that might otherwise have applied.

THIRD CAUSE OF ACTION
(Violation of The Racketeer Influenced and Corrupt Organizations Act)

171. Marcus & Millichap hereby incorporates by this reference each of the foregoing allegations and restates the same as though set forth fully herein.

172. The Racketeer Influenced and Corrupt Organizations Act, codified at 18 U.S.C. §§ 1961-68 ("RICO"), was enacted in 1970 as an attempt, through comprehensive legislation, to combat organized crime affecting interstate commerce, though the statute is in no way limited to what one might hold as traditional notions of "organized crime."

173. Broadly, RICO prohibits four types of activities:

1 a. Using or investing in any “enterprise” engaged in or affecting interstate
2 commerce any income derived from a “pattern of racketeering activity;”

3 b. Using a “pattern of racketeering activity” to acquire or maintain any interest in
4 or control over an “enterprise” engaged in or affecting interstate commerce;

5 c. Conducting or participating in the affairs of an “enterprise” engaged in or
6 affecting interstate commerce through a “pattern of racketeering activity;” and

7 d. Conspiring to do any of the foregoing.

8 *See* 18 U.S.C. § 1962.

9 174. The statute defines “enterprise” as including “any individual, partnership,
10 corporation, association, or other legal entity, and any union or group of individuals associated in
11 fact although not a legal entity.” *See* 18 U.S.C. § 1961(4).

12 175. The NREC is an “enterprise” as the term is defined in RICO, as it is a government
13 agency and therefore is an association or other legal entity constituting an “enterprise” under the
14 RICO statute.

15 176. The NREC Defendants are all members of the NREC and are thus members of an
16 “enterprise” as the term is defined in RICO.

17 177. Former NREC President Johnson was at times relevant hereto also a member of
18 NREC, and therefore was a member of the same “enterprise,” and has continued to associate with
19 the illegal “enterprise” through his conduct even after he was no longer a member of the NREC,
20 including but not limited to his investigations against Marcus Brokers and his causing Marcus
21 Brokers to be targeted, investigated, prosecuted, and disciplined by the NREC.

22 178. NRED Chief Investigator Holle is employed by the same division of the Nevada
23 State Government as, and works hand-in-hand with, the NREC. He participates in the illegal
24 “enterprise” by among other things investigating the charges prosecuted before the NREC and
25 testifying in those proceedings. Accordingly, NRED Chief Investigator Holle is also a member of
26 the same “enterprise,” being a member of this group of individuals associated in fact even if not a
27 legal entity.
28

1 179. Each of the Defendants is a culpable person under the RICO statute, separate and
2 distinct from the criminal enterprise that is the NREC as it is being operated by the Defendants.

3 180. The statute defines “racketeering activity” very broadly, including a litany of
4 specifically enumerated activities, including but not limited to mail or wire fraud (18 USC §§
5 1341, 1343). *See* 18 USC § 1961(1).

6 181. The RICO statute defines “pattern of racketeering activity” as requiring only two
7 acts of racketeering activity, so long as a “pattern” of activity is shown. *See* 18 U.S.C. § 1961(5).

8 182. The Defendants have engaged in a “pattern of racketeering activity” as evidenced
9 through their initiation of at least thirty (30) investigations, prosecutions, and/or disciplinary
10 actions against Marcus Brokers, including multiple investigations, prosecutions, or disciplinary
11 actions against the Marcus & Millichap Brokers:

12 a. Plaintiff White is a Nevada-licensed broker, but even with his Nevada license
13 he has been investigated, prosecuted, or disciplined by the Defendants for having
14 cooperated and associated with out-of-state brokers in connection with at least ten (10)
15 Nevada properties. White has been fined no less than thirty-six thousand one hundred
16 twenty-five dollars and eleven cents (\$36,125.11) by the Defendants. Other similarly
17 situated, in-state Nevada-licensed Marcus Brokers have likewise been investigated,
18 prosecuted, or disciplined by Defendants for having cooperated and associated with
19 out-of-state brokers doing business in Nevada. For example, Todd Manning is an in-
20 state Broker who has been investigated, prosecuted, and fined for having cooperated
21 with out-of-state Brokers, even when trying to do so within Defendants’ unlawful
22 restrictions.

23 b. Plaintiff Allred has been investigated, prosecuted, or disciplined by the
24 Defendants in connection with at least three (3) Nevada properties. Allred has been
25 fined no less than three hundred one thousand six hundred thirty-nine dollars and
26 eighty-nine cents (\$301,639.89) by the Defendants.

27 c. Other Marcus Brokers have also been targeted, prosecuted, and disciplined by
28 Defendants. Marcus Broker Glen Kunofsky has been investigated, prosecuted, or

1 disciplined by the Defendants in connection with at least six (6) Nevada properties.
2 Kunofsky has been fined no less than three hundred one thousand two hundred twelve
3 dollars and ninety-nine cents (\$301,212.99) by the Defendants. Marcus Broker Alvin
4 Mansour has been investigated, prosecuted, and disciplined by the Defendants in
5 connection with at least two (2) Nevada properties. Mansour has been fined no less
6 than thirty thousand eight hundred eleven dollars and seventy-nine cents (\$30,811.79)
7 by the Defendants.

8 d. Marcus Brokers have been targeted more than thirty (30) times and fined more
9 than seven hundred thousand dollars (\$700,000) by these Defendants.

10 e. Not only does the sheer volume and number over the course of more than two
11 years establish a "pattern," the process utilized by the Defendants also follows the
12 same "pattern":

13 i. One of the Defendants identifies a real estate transaction involving a
14 Marcus Broker which they believe is not in compliance with the Defendants'
15 illegal restrictions on out-of-state brokerage;

16 ii. Defendant Holle then causes a "cease and desist" letter to be sent to the
17 Broker and to Marcus, demanding that the Broker and Marcus come into
18 compliance with the illegal restrictions, and Defendant Holle causes an
19 investigation to be opened against the Broker with written notice to be sent to
20 the Broker and Marcus;

21 iii. When Defendant Holle or his investigator(s) determine the Defendants'
22 restrictions on commerce and competition have been violated, the NRED then
23 files a complaint with the NREC to commence prosecution against the Broker
24 for the alleged violations of the illegal restrictions and the NREC Defendants
25 cause notice of the complaint and obligations to respond to be served on the
26 Broker;

27 iv. The NREC Defendants then hold a hearing where the Broker is
28 prosecuted for alleged violations of the illegal restrictions; and

v. The NREC Defendants then determine the Broker has violated the Defendants' illegal restrictions and impose fines, penalties or other disciplinary actions against the Broker.

f. The Defendants have engaged in this same pattern of investigation, prosecution, and discipline in each of the thirty (30) instances in which Marcus Brokers have been investigated, prosecuted, or disciplined, including in each instance in which the plaintiff Brokers have been investigated, prosecuted, and disciplined.

183. The Defendants have engaged in a pattern of racketeering activity, spanning the course of years—including since at least 2016 and in at least thirty (30) separate instances with respect to Marcus Brokers—by, at a minimum, engaging in mail and wire fraud, as set forth in detail below. This pattern constitutes the Defendants' regular way of doing business which projects into the future indefinitely until this Court puts a stop to it.

184. **Mail Fraud (18 USC § 1341):**

a. Federal law makes it a crime punishable by up to twenty years in prison whenever a person:

[H]aving devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises . . . for the purpose of executing such scheme or artifice or attempting so to do, place[s] in any post office or authorized depository for mail matter, any matter or thing whatsoever to be sent or delivered by the Postal Service . . . [or] any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing

See 18 USC 1341.

b. The essential elements of mail fraud are: (1) a scheme to defraud, (2) involving the use of the mail, (3) for the purpose of executing the scheme. *See United States v. Hatch*, 926 F.2d 387, 392 (5th Cir. 1991).

c. As alleged above, the Defendants have devised and are operating a scheme or artifice to defraud consumers and participants in the real estate market, under the fraudulent pretense of protecting consumers and reasonably regulating industry, when the Defendants' true and actual intent was to monopolize the industry for themselves

1 and others similarly situated and thereby profit from increased commissions and
2 decreased competition.

3 i. For example, NRED's mission statement reads as follows, "[T]o
4 protect the public and Nevada's real estate sectors by fairly and effectively
5 regulating real estate professionals through licensure, registration, education
6 and enforcement." *See* http://red.nv.gov/Content/Contact/About_Us/; *last*
7 *visited* Nov. 12, 2018. The NREC is administered by and subject to the
8 administrative supervision of the Director of the NRED. *See* Nev. Rev. Stat. §§
9 645.045, .050. Thus, the NREC operates under the same mission statement as
10 the NRED.

11 ii. The Defendants' however, have usurped the NREC and misused their
12 authority to harm the public and Nevada's real estate sectors by stifling fair
13 competition and thwarting interstate commerce as part of their fraudulent
14 scheme to monopolize the real estate industry and exclude out-of-state brokers.

15 iii. In furtherance of this fraudulent scheme, the Defendants among other
16 things:

- 17 1. Made false accusations of criminal and other misconduct against
18 Marcus Brokers;
- 19 2. Wrongfully held themselves out as having authority to take the
20 actions they took, including authority to adjudicate criminal
21 prosecutions;
- 22 3. Conducted sham hearings, trials, or other regulatory or
23 administrative proceedings wherein the Defendants deprived
24 Marcus Brokers their constitutional rights to due process and public
25 trial of criminal complaints by juries of their peers and to be free
26 from self-incrimination

27 d. As evidenced by the Defendants' own statements made in connection with
28 promulgating and enforcing the regulations, the purpose of the Defendants' fraudulent

1 scheme was not to protect customers or reasonably regulate the industry, but to
2 exclude out-of-state brokers from the Nevada real estate market in an unlawful effort
3 to stifle interstate commerce, to thwart fair competition, and to mis-use their public
4 offices for their own, private and individual gains. Specifically, as to Marcus &
5 Millichap, the Defendants' efforts have been to exclude and drive out Marcus Brokers
6 from the Nevada real estate market.

7 e. The Defendants acted at all times relevant hereto with intent to defraud Marcus
8 & Millichap, all other Marcus Brokers targeted by Defendants, other brokers who
9 have similarly been targeted, and even the property owners and consumers in the State
10 of Nevada.

11 f. Marcus Brokers, and other out-of-state brokers, relied on the representations
12 that the NREC and NRED, and the regulations and statutes applicable thereto, were
13 intended to protect consumers and merely reasonably regulate industry, when they
14 engaged in business in the State of Nevada and, specifically to Marcus and its Brokers,
15 submitted to the jurisdiction of the NREC for the adjudication of the complaints
16 prosecuted against them (albeit subject to objections). Had Marcus & Millichap
17 known the Defendants' true and actual intent of their regulatory scheme was to stifle
18 interstate commerce and thwart fair competition in an effort to monopolize the Nevada
19 real estate industry, or that the Defendants would misuse their status as commissioners
20 of the NREC or employees of the NRED for their own personal interests and gain, the
21 Plaintiffs would not have done business in the State of Nevada nor submitted to the
22 jurisdiction of the NREC.

23 g. This illegal and fraudulent scheme is operated by the Defendants for their own
24 financial gain in the form of decreased competition from out-of-state brokers and
25 increased business opportunities for themselves and others similarly situated.

26 h. In furtherance of their fraudulent scheme, and for the purpose of executing the
27 same, the Defendants have made use of the United States Postal Service by depositing
28 mail to be sent or delivered, and/or taking or receiving therefrom, certain

communications, complaints, briefing, notices, orders, and other matters. While the actual mailings sent by or on behalf of the Defendants in furtherance of their fraudulent scheme are too numerous to identify individually, at least the following specific mailings are identified with particularity for purposes of pleading this claim:

Date of Mailing	Subject	Sender	Recipient	Nature of Mailing
April 5, 2016	NRED v. Allred	D. McClosky, NRED Investigator	Plaintiff Allred	NRED Investigator under supervision or control of Defendant Holle mailed notice of investigation against Plaintiff Allred
April 7, 2016	Cease and Desist Order	T. Thompson, Administration Section Manager	Plaintiff Allred	NRED mailed Plaintiff Allred an Order to cease and desist engaging in brokerage activity in Nevada
April 26, 2016	NRED v. White	D. McClosky, NRED Investigator	S. Mott, Marcus	NRED Investigator under supervision or control of Defendant Holle mailed notice of investigation against Plaintiff White
May 31, 2016	NRED v. Mansour	D. McClosky, NRED Investigator	S. Mott, Marcus	NRED Investigator under supervision or control of Defendant Holle mailed notice of investigation against Alvin Mansour
May 31, 2016	NRED v. White	D. McClosky, NRED Investigator	S. Mott, Marcus	NRED Investigator under supervision or control of Defendant Holle mailed notice of investigation against Plaintiff White
June 1, 2016	Cease and Desist Order	Joseph Decker, NRED Administrator	Alvin Mansour	NRED mailed Alvin Mansour an Order to cease and desist engaging in brokerage activity in Nevada
June 29, 2017	NRED v. Kunofsky	D. McClosky, NRED Investigator	Glen Kunofsky c/o S. Mott, Marcus	NRED Investigator under supervision or control of Defendant Holle mailed notice of determination of violation against Glen Kunofsky
July 6, 2016	NRED v. Kunofsky	D. McClosky, NRED Investigator	Glen Kunofsky	NRED Investigator under supervision or control of Defendant Holle mailed notice of

Date of Mailing	Subject	Sender	Recipient	Nature of Mailing
				investigation against Glen Kunofsky
Dec. 16, 2016	NRED v. ALLRED	D. McClosky, NRED Investigator	Plaintiff Allred c/o S.Mott, Marcus	NRED Investigator under supervision or control of Defendant Holle mailed notice of determination of violation against Plaintiff Allred
June 20, 2017	NRED v. Mansour	D. McClosky, NRED Investigator	Alvin Mansour c/o S. Mott, Marcus	NRED Investigator under supervision or control of Defendant Holle mailed notice of determination of violation against Alvin Mansour
July 11, 2017	NRED v. Mansour	R. Hardin, NREC Coordinator	Alvin Mansour	NREC mailed notice of its decision to fine Alvin Mansour \$30,811.79 with copies sent to the NREC Defendants
Sept. 20, 2017	NRED v. Manning	D. McClosky, NRED Investigator	Todd Manning	NRED Investigator under supervision or control of Defendant Holle mailed notice of investigation against Todd Manning
Oct. 24, 2017	NRED v. Manning	D. McClosky, NRED Investigator	Todd Manning c/o S. Mott	NRED Investigator under supervision or control of Defendant Holle mailed notice of intent to file complaint before the NREC against Todd Manning
Feb. 12, 2018	NRED v. Manning	R. Hardin, NREC Coordinator	Todd Manning c/o S. Mott, Marcus	NREC mailed notice of hearing scheduled before the NREC against Todd Manning
Feb. 16, 2018	NRED v. Kunofsky	R. Hardin, NREC Coordinator	Glen Kunofsky c/o S. Mott, Marcus	NREC mailed notice of complaint against Glen Kunofsky to be heard by the NREC
Feb. 16, 2018	NRED v. White	R. Hardin, NREC Coordinator	Plaintiff White c/o S. Mott, Marcus	NREC mailed notice of complaint against Plaintiff White to be heard by the NREC
April 23, 2018	NRED v. Manning	R. Hardin, NREC Coordinator	Todd Manning	NREC's decision to fine Todd Manning \$1,947.52 was mailed to Todd Manning
July 31, 2018	NRED v. Kunofsky	R. Hardin, NREC Coordinator	Glen Kunofsky	NREC's decision to fine Glen Kunofsky \$301,212.99 was mailed

Date of Mailing	Subject	Sender	Recipient	Nature of Mailing
				to Glen Kunofsky
July 31, 2018	NRED v. White	R. Hardin, NREC Coordinator	Plaintiff White	NREC's decision to fine Plaintiff White \$13,688.99 was mailed to Plaintiff White

i. The Defendants have thus repeatedly and over the course of several years utilized the United States mail system to perpetuate their fraudulent scheme against Marcus and its Brokers, in violation of federal law.

185. **Wire Fraud (18 USC § 1343):**

a. Federal law makes it a crime punishable by up to thirty years in prison to:

[H]aving devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire . . . in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice

See 18 USC 1343.

b. As alleged above, the Defendants have devised and are operating a scheme or artifice to defraud by way of sham hearings, trials, or other regulatory or administrative proceedings to deprive Marcus Brokers of constitutional rights, to stifle interstate commerce, to thwart fair competition, and to mis-use their public offices for their own, private and individual gains.

c. This illegal and fraudulent scheme is operated by the Defendants for their own financial gain in the form of decreased competition from out-of-state brokers and increased business opportunities for themselves and others similarly situated.

d. The Defendants acted at all times relevant hereto with intent to defraud Marcus & Millichap, all other Marcus Brokers targeted by Defendants, other brokers who have similarly been targeted, and even the property owners and consumers in the State of Nevada.

e. In furtherance of their fraudulent scheme, and for the purpose of executing the same, the Defendants have transmitted by wire in interstate commerce certain writings

including communications, complaints, briefing, notices, and other matters. While the actual electronic communications sent by or on behalf of the Defendants in furtherance of their fraudulent scheme are too numerous to identify individually, at least the following specific electronic communications are identified with particularity for purposes of pleading this claim:

Date	Subject	Sender	Recipient	Nature of Communication
June 25, 2014	Coop Cert Regulation Revision	Defendant Holle	G. Anderson	Defendant Holle communicated via email the Defendants' intentions to prohibit out-of-state brokers from listing Nevada property for Nevada property owners because it "is taking business away from our Nevada licensees."
March 14, 2016	Concern ref CO-OP Broker	Defendant Johnson	Defendant Holle	Defendant Johnson emailed Defendant Holle the research Johnson had conducted regarding out-of-state brokers doing business in Nevada.
April 5, 2016	RE: Gordon Allred	Defendant Holle	Plaintiff White	Defendant Holle emailed Plaintiff White about "violators" of the Defendants' regulatory scheme, saying "the violators are not going to appreciate it . . . lol" and saying the out-of-state brokers' business should have been White's, as an in-state broker
April 6, 2016	RE: Gordon Allred	Defendant Holle	S. Mott, Marcus	Defendant Holle emailed S. Mott in interstate communications stating that the investigation against Plaintiff Allred was assigned to one of Holle's investigators.
April 6, 2016	RE: Gordon Allred	D. McCloskey	S. Mott, Marcus	NRED Investigator under supervision or control of Defendant Holle and at Holle's direction emailed Marcus a copy of a notice of investigation against Plaintiff Allred in interstate

Date	Subject	Sender	Recipient	Nature of Communication
				communications.
April 26, 2016	RE: NRED vs. ALLRED – Case No. 2016-1734	D. McCloskey	S. Mott, Marcus	NRED Investigator under supervision or control of Defendant Holle emailed Marcus in interstate communications requesting additional documents to investigate Plaintiff Allred.
Dec. 5, 2016	Complaint NRED vs. GERMAIN Case No. 2106-4108	D. McCloskey	S. Mott, Marcus	NRED Investigator under supervision or control of Defendant Holle emailed Marcus in interstate communications providing notice of open investigations against Marcus Brokers.
Nov. 29, 2017	FW: Marcus & Millichap Agent Administrative Hearings	R. Hardin, NREC Coordinator	C. Coyle	NREC Coordinator emailed counsel for Marcus and its Brokers denying requests for continuances and instructing Brokers to appear before the NREC.
Sept. 7, 2018	FW: Scott Ruble Listing	Defendant Holle	S. Mott, Marcus	Defendant Holle emailed S. Mott in interstate communications to make inquiries in furtherance of an investigation against a Marcus Broker

f. The Defendants have thus repeatedly and over the course of several years transmitted by wire in interstate commerce communications in furtherance of their unlawful endeavors and so engaged in wire fraud against Marcus and its Brokers, in violation of federal law.

186. The RICO statute provides a private right of civil action to “[a]ny person injured in his business or property by reason of violation of section 1962”. *See* 18 USC § 1964(c).

187. This Court has jurisdiction to prevent and restrain violations of section 1962 by, among other things:

[O]rdering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering

1 **dissolution or reorganization of any enterprise, making due provision for the**
2 **rights of innocent persons.**

3 *See* 18 USC § 1964(a).

4 188. Persons injured by reason of a violation of section 1962 are entitled to “recover
5 threefold the damages he sustains and the costs of the suit, including a reasonable attorney’s fee.”

6 *See* 18 USC § 1964(a).

7 a. Accordingly, Marcus & Millichap is entitled to an award of damages against
8 the Defendants for among other things:

9 i. The more than \$700,000.00 in fines and penalties imposed by the
10 Defendants in the course of their illegal scheme, trebled as permitted by the
11 RICO statute;

12 ii. The attorneys’ fees and costs incurred defending against the
13 investigations, prosecutions, disciplinary actions, and court proceedings and
14 appeals necessitated by, relating to, or resulting from the Defendants’ scheme,
15 trebled as actual damages, as permitted by the RICO statute;

16 iii. The Plaintiffs’ lost profits and business opportunities, including (i) lost
17 profits and opportunities resulting from the significant and burdensome time
18 Marcus and its Brokers have been compelled to devote to fighting against the
19 Defendants’ illegal scheme, and (ii) lost profits and opportunities resulting
20 from Plaintiffs not being allowed to do business in Nevada without being
21 subject to the Defendants’ illegal scheme, trebled as actual damages, as
22 permitted by the RICO statute;

23 iv. A disgorgement of all proceeds received by each of the Defendants as a
24 result of their illegal restraints on trade, including but not limited to
25 commissions they received in the course of their business(es) that might have
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27
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gone to any out-of-state broker had the out-of-state broker been permitted to do business in this state without the Defendants' illegal scheme;⁵ and

v. Attorneys' fees and costs incurred pursuing this action.

189. Marcus & Millichap is entitled to injunctive and equitable relief including but not limited to an order from this court:

a. Declaring the statutes and regulations that provide the foundation for the Defendants' scheme illegal in violation of federal antitrust laws;

b. Vacating all prior findings, conclusions, penalties, fines, and other orders or decisions entered by the Defendants against Marcus Brokers;

c. Enjoining any and all pending or future proceedings before these Defendants or the NREC;

d. Enjoining these Defendants and any or all others from investigating, prosecuting, adjudicating, or taking any disciplinary actions, against Marcus Brokers for alleged violations of the Defendants' illegal scheme; and

e. Reorganizing the NREC and prohibiting these Defendants from taking any part in the NREC or its investigations, prosecutions, hearings, or decisions.

190. Marcus & Millichap is entitled to an award of treble damages for the harm suffered as a result of the Defendants' RICO violations; as well as an order from this court that the Defendants be divested of any interests in their illegal enterprise, namely the NREC as it is illegally and fraudulently operated by the Defendants; that the Defendants be enjoined from any future activities or participating in such enterprise or any other similar enterprise; and that the *NREC be dissolved* or reorganized.

⁵ Marcus & Millichap recognizes there is an apparent split of authority amongst Circuit Courts of Appeals with regard to whether equitable relief such as disgorgement is available to remedy RICO violations. Such remedies are available with regard to federal antitrust violations. Some older Circuit Court decisions appear to have determined that such equitable remedies are not available in connection with RICO violations. However, more recent Circuit Court decisions appear to allow disgorgement and other equitable remedies in connection with RICO violations. Even if disgorgement and similar equitable remedies have not been expressly permitted in connection with RICO claims in the Ninth Circuit, Plaintiffs advocate that such relief should be permitted, as recognized in the more recent Circuit Court decisions.

FOURTH CAUSE OF ACTION
(Violations of 42 U.S.C. § 1983)

191. Marcus & Millichap hereby incorporates by this reference each of the foregoing allegations and restates the same as though set forth fully herein.

192. Section 1983 provides in pertinent part,

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]

42 U.S.C. § 1983.

193. As set forth above, Marcus and its Brokers each hold federally-protected rights to fair competition and interstate commerce, as well as due process of law, trial of criminal charges before juries of their peers, and other rights described above. These federally-protected rights include the following:

a. Protections against contracts, combinations, or conspiracies to restrain or monopolize interstate commerce set forth in the Sherman Antitrust Act, 15 U.S.C. §§ 1, *et seq.*;

b. The right to have interstate commerce regulated and governed exclusively by the United States Congress, as set forth in the Commerce Clause, U.S. Constitution, Article 1, Section 8, Clause 3;

c. Protections against criminal enterprises and patterns of racketeering activities affecting interstate commerce, as set forth in the RICO statute, 18 U.S.C. §§ 1961-68;

d. Protections against mail or wire fraud, as set forth in 18 U.S.C. §§ 1341, 1343;

e. Protections of a speedy and public trial by an impartial jury on all criminal charges, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor, as set forth in the Sixth Amendment to the U.S. Constitution;

1 f. Protections of due process, as set forth in the Fourth, Fifth and Fourteenth
2 Amendments to the U.S. Constitution; and

3 g. Protections against being compelled in criminal cases to be a witness against
4 himself, as set forth in the Fifth Amendment to the U.S. Constitution.

5 194. These federally-protected rights were clearly established prior to the events at
6 issue in these proceedings, and the Defendants knew or should have known these rights existed at
7 all times relevant hereto, as these rights would have been clear to any reasonable public official
8 engaged in the conduct alleged herein.

9 195. As set forth in detail above, the Defendants, acting under color of state law and
10 abusing their positions, deprived Marcus and its Brokers of their federally-protected rights to fair
11 competition and interstate commerce, as well as due process of law, trial of criminal charges
12 before juries of their peers, and other rights described above.

13 196. The Defendants deprived Marcus and its Brokers of these rights intentionally, for
14 the purpose of stifling interstate real estate brokerage, thwarting fair competition, and mis-using
15 their public offices for their own, individual and private financial gains and interests.

16 197. The Defendants not only deprived Marcus and its Brokers of these rights, but did
17 so in combination with each other as part of a conspiracy by which the Defendants acted to
18 accomplish their unlawful objectives of illegally stifling interstate commerce and thwarting fair
19 competition for their own, individual and private financial gains and interests.

20 198. The Defendants acted maliciously and wantonly, prompted by ill will and spite
21 toward Marcus and its Brokers in particular but also toward all other out-of-state brokers and
22 brokerage firms.

23 199. The Defendants consciously desired to violate federal rights of interstate
24 commerce, fair competition, due process, and other federally-protected rights alleged herein, all
25 of which the Defendants were aware.

26 200. The Defendants knew their conduct was unlawful, but continued in their illegal
27 scheme to injure Marcus and its Brokers.
28

1 201. The Defendants acted recklessly or with callous disregard for Marcus 's rights and
2 those of its Brokers.

3 202. The Defendants have not performed classic adjudicatory functions. The
4 Defendants were not independent, but rather were market participants competing with Marcus
5 Brokers and self-interested in the outcomes of the proceedings, and the processes invoked by the
6 Defendants did not involve standard procedural safeguards such as the right to due process, the
7 right to compel witnesses, cross-examination of witnesses, discovery, exclusion of hearsay, and a
8 standard burden of proof. Moreover, the Defendants were responsible for adopting the subject
9 restrictions and adjudicated the alleged violations of those restrictions. The Defendants thus
10 acted both as lawmaker and monitor of compliance, combining functions in a manner inconsistent
11 with the role of the judiciary for which immunity might otherwise be permitted.

12 203. In so doing, the Defendants have harmed and damaged Marcus and its Brokers in
13 amounts to be proven at trial but exceeding \$700,000.00. Additionally, Marcus —for itself and
14 on behalf of its Brokers—has incurred hundreds of thousands of dollars in attorneys' fees and
15 costs defending against Defendants' illegal scheme, and is expected to incur hundreds of
16 thousands of dollars in additional attorneys' fees and costs as it continues to fight against
17 Defendants' illegal scheme.

18 204. The harm and damage suffered, and attorneys' fees and costs incurred, by Marcus
19 would not have occurred but for Defendants' conduct.

20 205. Marcus is entitled to an award of compensatory damages for the harm suffered and
21 attorneys' fees and costs incurred as a result of the Defendants' Section 1983 violations.

22 206. Further, punitive damages should be awarded in favor of Marcus & Millichap and
23 against the Defendants, and each of them, to punish Defendants for their illegal conduct and to
24 deter the Defendants and others like the Defendants from committing similar illegal conduct in
25 the future.

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27 ////

FIFTH CAUSE OF ACTION
(Abuse of Process)

207. Marcus & Millichap hereby incorporates by this reference each of the foregoing allegations and restates the same as though set forth fully herein.

208. Under Nevada law, the tort of abuse of process occurs when one engages in a willful act in the use of the legal process which is not proper in the regular conduct of the proceeding with an ulterior purpose other than resolving a legal dispute.

209. While the tort might generally arise when a party or an attorney abuses legal process, here the Defendants have engaged in the unique conduct of abusing process while acting as adjudicators and investigators/witnesses (as opposed to being a party or an attorney).

210. The Defendants have engaged in willful acts in the use of legal process which are not proper in the regular conduct of the proceedings by, among other things, allowing criminal charges to be levied, tried, and determined in the Defendants' administrative tribunal when the Defendants have no jurisdiction or authority to try or determine criminal charges; denying parties their constitutional rights to due process, trial by jury, and to not be witnesses against themselves; by making findings and conclusions, and imposing penalties against Marcus Brokers, which are unsupported by evidence or even contradicted by evidence; by making findings and conclusions, and imposing penalties, against Marcus Brokers, even after acknowledging on the record that the required *mens rea* requirements for such findings, conclusions, and penalties have not been met; by conducting fraudulent and sham hearings and trials against Marcus Brokers; and by mis-using their public offices in their unlawful efforts to stifle interstate commerce and thwart fair competition for the Defendants' own, individual and private financial gains.

211. The Defendants have acted as a regulatory body while allowing *criminal* complaints to be prosecuted and adjudicated in their administrative tribunal, and have simultaneously acted as lawmaker, prosecutor, judge, and jury, in their proceedings against Marcus Brokers.

212. The Defendants have engaged in these willful acts with the ulterior purposes of stifling interstate commerce and thwarting fair competition for the Defendants' own, individual and private financial gains, rather than for the purpose of resolving legal disputes.

213. Marcus & Millichap has been significantly harmed by the Defendants' abuse of process, and is entitled to an award of all damages suffered as a result of the Defendants' illegal scheme, including but not limited to the more than \$700,000 the Defendants have forced Marcus & Millichap to pay in fines and penalties (or in bonds as matters are on appeal), but also the hundreds of thousands of dollars in attorneys' fees and costs Marcus & Millichap has incurred defending against Defendants' illegal scheme, and is expected to incur as it continues to fight against Defendants' illegal scheme, and all other remedies and relief available to Marcus & Millichap under the law.

SIXTH CAUSE OF ACTION
(Conspiracy)

214. Marcus & Millichap hereby incorporates by this reference each of the foregoing allegations and restates the same as though set forth fully herein.

215. In Nevada, civil conspiracy is actionable as a tort when there exists a combination of two or more persons who, by concerted action, intend to accomplish an unlawful objective for the purpose of harming another and damage results from those acts. (*See Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 971 P.2d 1251 (Dec. 1998)).

216. As alleged above, the Defendants have combined and conspired to illegally stifle interstate commerce and thwart fair competition for the Defendants' own, individual and private financial gains and interests.

217. The Defendants have, by concerted action, amended regulations without satisfying the mandatory requirements of the Nevada Administrative Procedures Act to provide notice, an opportunity to be heard by the public, and other safeguards and oversight; investigated, prosecuted, adjudicated, and taken other actions in response to alleged violations of the same illegally-enacted regulations they themselves promulgated; presided over and participated in

1 sham and fraudulent trials or proceedings and therein denied the victim defendants due process of
2 law and other federally-protected and constitutional rights; all with the intent to further their
3 unlawful objectives and illegal scheme.

4 218. The Defendants have allowed criminal charges to be levied, tried, and determined
5 in the Defendants' administrative tribunal when the Defendants had no jurisdiction or authority to
6 try or determine criminal charges; denied parties their constitutional rights to due process, trial by
7 jury, and to not be witnesses against themselves; made findings and conclusions, and imposed
8 penalties, which are unsupported even contradicted by evidence; made findings and conclusions,
9 and imposed penalties, even after acknowledging on the record that the required *mens rea*
10 requirements for such findings, conclusions, and penalties have not been met; conducted
11 fraudulent and sham hearings and trials; and mis-used their public offices in their unlawful efforts
12 to stifle interstate commerce and thwart fair competition for the Defendants' own, individual and
13 private financial gains.

14 219. The Defendants have conspired to, among other things, commit the torts of abuse
15 of process, unfair competition, and interference with prospective and actual business advantage,
16 in addition to violations of antitrust laws, the RICO statute, and deprivation of constitutional
17 rights.

18 220. The Defendants have done the foregoing with unlawful intent, and not merely a
19 mistaken understanding of the law. This is especially true and evidenced by the fact that Marcus
20 Brokers actively and consistently objected to the Defendants' actions—and thereby informed the
21 Defendants of the law and their legal duties, obligations, and limitations on their authority—yet
22 Defendants proceeded with their illegal scheme despite having been so informed of the law.

23 221. The Defendants have acted with intent to harm Marcus and its Brokers by denying
24 them opportunities to earn livelihoods, denying them rights to compete freely and fairly, imposing
25 penalties and fines against them in excess of \$700,000, and forcing Marcus & Millichap to incur
26 hundreds of thousands of dollars in attorneys' fees and costs, all as part of the Defendants' illegal
27 scheme designed to stifle interstate commerce and thwart fair competition for the Defendants'
28 own, individual and private financial gains.

SEVENTH CAUSE OF ACTION
(Unfair Competition / Deceptive Trade Practices)

224. Nevada Revised Statute § 598.0923 provides in pertinent part, “A person engages in a ‘deceptive trade practice’ when in the course of his or her business or occupation he or she knowingly: . . . (3) Violates a state or federal statute or regulation relating to the sale or lease of goods or services. [or] (4) Uses coercion, duress or intimidation in a transaction.”

226. The federal antitrust laws and the RICO statute each relate to the sale or lease of goods or services. The Sherman Act, 15 U.S.C. Sections 1 and 2, specifically prohibits restraints of trade or commerce among the states. Such trade and commerce undoubtedly includes the sale or lease of goods and services, such as real estate brokerage. The RICO statute prohibits, among other things, conducting or participating in the affairs of any “enterprise” engaged in or affecting

1 interstate commerce, such as the NREC. Such interstate commerce undoubtedly includes the sale
2 or lease of goods and services, such as real estate brokerage.

3 227. In so doing, the Defendants have violated state and federal laws relating to the sale
4 of goods or services, including antitrust laws and the RICO statute, as alleged above.

5 228. Additionally, the Defendants have used coercion, duress or intimidation in
6 numerous transactions. Each of the Defendants' investigations, prosecutions, and disciplinary
7 actions against Marcus Brokers, including Marcus & Millichap, has been done in connection with
8 the specific transactions at issue in those proceedings. The Defendants' actions in connection
9 with those proceedings have been done with the intent to coerce, cause duress, and/or to
10 intimidate Marcus Brokers to either get out of the Nevada real estate market in its entirety or to
11 comport to the Defendants' illegal regulatory scheme. The use of coercion, duress, or
12 intimidation in these proceedings have had the effect of preventing Marcus Brokers, and other
13 out-of-state brokers, from engaging in other transactions which, instead, have been handled by the
14 Defendants or other in-state Nevada resident brokers like the Defendants.

15 229. The Defendants have violated Marcus & Millichap's state and federal rights in the
16 course of the Defendants' business or occupation. Defendant Holle is employed by the NRED
17 and is paid for his investigation and participation in the prosecution of Marcus Brokers. The
18 other Defendants are each entitled to receive "(a) A salary of not more than \$150 per day . . .
19 while engaged in the business of the Commission; and (b) A per diem allowance and travel
20 expenses . . . while engaged in the business of the Commission." *See* Nev. Rev. Stat. §
21 645.140(4). Moreover, the NREC Defendants were acting as market participants competing with
22 Marcus Brokers when utilizing their roles as NREC Commissioners, and thus their conduct
23 undertaken as Commissioners was in furtherance of their private business or occupation as real
24 estate brokers.

25 230. Because the Defendants' violations of state and federal law have been undertaken
26 by the Defendants in the course of his or her individual business or occupation, mis-using their
27 public offices for their own personal gains, the Defendants have engaged in "Deceptive trade
28 practices" in violation of Nev. Rev. Stat. § 598.0923.

231. Consumers and the general public have been harmed by Defendants' deceptive trade practices, by among other things having been deceived that Defendants, and other similarly situated in-state brokers, are the only lawfully available option to represent them in their various real estate transactions, when the U.S. Constitution and federal laws prohibit the Defendants' deceptive practices and the unlawful exclusion of out-of-state brokers.

232. Marcus & Millichap has been significantly harmed by the Defendants' unfair competition, and is entitled to an award of all damages suffered as a result of the Defendants' illegal scheme, including but not limited to the more than \$700,000 the Defendants have forced Marcus & Millichap to pay in fines and penalties (or in bonds as matters are on appeal), the hundreds of thousands of dollars in attorneys' fees and costs Marcus & Millichap has incurred defending against Defendants' illegal scheme, and is expected to incur as it continues to fight against Defendants' illegal scheme, and all other remedies and relief available to Marcus & Millichap under the law.

EIGHTH CAUSE OF ACTION
(Tortious Interference with Business Relations)

233. Marcus & Millichap hereby incorporates by this reference each of the foregoing allegations and restates the same as though set forth fully herein.

234. Marcus and its Brokers have business relationships with property owners and consumers of commercial real estate nationwide, including in Nevada and with regard to Nevada real estate.

235. Even those property owners and consumers which do not yet have business relationships with Marcus and its Brokers are prospective customers and clients of Marcus and its Brokers.

236. The Defendants, licensed real estate brokers in the State of Nevada, know of Marcus's and its Brokers' business relationships (either actual, or at a minimum prospective).

237. The Defendants, as alleged above, through their illegal regulatory and disciplinary scheme have acted with intent to prevent Marcus and its Brokers from forming business relationships with property owners and resident consumers of Nevada real estate, and to interfere

1 with any such relationships, such that Marcus and its Brokers have been and continues to be
2 prevented from providing services to these prospective or actual relations.

3 238. The Defendants unlawful activities, alleged above, remove and destroy any
4 privilege or justification which might otherwise protect the Defendants from liability for the
5 Defendants' actions. There is no "privilege" or "justification" for the Defendants' unlawful
6 actions pleaded in this Complaint.

7 239. Marcus & Millichap has been significantly harmed by the Defendants' intentional
8 interference with Marcus & Millichap's business relationships. Marcus and its out-of-state
9 Brokers have been denied the opportunity to represent owners of Nevada real estate seeking to
10 sell their Nevada properties. Marcus and its out-of-state Brokers have been denied the opportunity
11 to represent Nevada residents seeking to buy Nevada properties. Marcus & Millichap is entitled to
12 an award of all damages suffered as a result of the Defendants' conduct, and all other remedies
13 and relief available to Marcus & Millichap under the law.

14 **NINTH CAUSE OF ACTION**
15 **(Declaratory Judgment)**

16 240. Marcus & Millichap hereby incorporates by this reference each of the foregoing
17 allegations and restates the same as though set forth fully herein.

18 241. There exists an actual, genuine, bona fide, and substantial controversy and dispute
19 between the parties to this action, and the parties hereto have adverse legal interests.

20 a. Marcus Brokers, including Marcus & Millichap, has been repeatedly
21 investigated, prosecuted, disciplined, and harassed by the Defendants as part of the
22 Defendants' illegal enterprise and unconstitutional regulatory scheme. Specifically,
23 Plaintiffs allege:

- 24 i. The restrictions imposed on interstate commerce, including but not limited
25 to the amended regulations adopted by the NREC contained in Nev.
26 Admin. Code § 645.185, violate the Dormant Commerce Clause of the
27 U.S. Constitution, federal antitrust laws, and the RICO statute.
28

1 ii. The Defendants' conduct against Marcus Brokers, including Marcus &
2 Millichap, violate the Plaintiffs' constitutional rights to due process, fair
3 and impartial trials of criminal charges by juries of their peers and to be
4 free from self-incrimination, and also violate federal antitrust laws and the
5 RICO statute.

6 b. The Defendants have consistently asserted their authority to do what they have
7 done, and continue to do, against Marcus and its Brokers.

8 242. The parties hereto have adverse legal interests. The Defendants continue to
9 investigate, prosecute, and discipline Marcus Brokers, and continue to assert the legality and
10 constitutionality of their prior investigations, prosecutions, and disciplining of Marcus Brokers in
11 legal proceedings before this Court and the Nevada state court.

12 243. The controversy in this action is of such immediacy and reality to warrant the
13 issuance of a declaratory judgment. If the Defendants' conduct is not declared unconstitutional
14 and in violation of federal law and federally-protected rights, the Defendants will continue to
15 investigate, adjudicate, and take action against Marcus and its Brokers.

16 244. This Court has authority, pursuant to 28 U.S.C. § 2201, to declare the rights and
17 other legal relations of the interested parties.

18 245. Marcus & Millichap respectfully requests the Court declare the following:

19 a. The restrictions imposed on interstate commerce, including but not limited the
20 amended regulations adopted by the NREC contained in Nev. Admin. Code §
21 645.185, violate the Dormant Commerce Clause of the U.S. Constitution, federal
22 antitrust laws, and the RICO statute.

23 b. The Defendants' conduct against Marcus and its Brokers, including Marcus &
24 Millichap, violate the Plaintiffs' constitutional rights to due process, fair and impartial
25 trials of criminal charges by juries of their peers and to be free from self-incrimination,
26 and also violate federal antitrust laws and the RICO statute.

REQUEST FOR RELIEF

NOW, WHEREFORE, Marcus & Millichap hereby requests judgment in its favor and against the Defendants as follows:

1. For Declaratory Judgment that the regulations amended or promulgated by the Defendants, and other restrictions on interstate commerce pursued by the Defendants, are unconstitutional and violate federal antitrust laws, the RICO statute, and other federally or constitutionally protected rights;

2. For Declaratory Judgment that the Defendants' investigations, prosecutions, and disciplinary actions for alleged violations of the unconstitutional regulations are themselves unconstitutional and violate federal antitrust laws, the RICO statute, and other federally or constitutionally protected rights;

3. For immediate, preliminary, and permanent injunctive relief enjoining any and all further action by the Defendants as members of the NREC;

4. For equitable relief setting aside and vacating all findings, conclusions, orders, fines, and penalties imposed against Marcus Brokers by the NREC;

5. For equitable relief dissolving or reorganizing the NREC;

6. For monetary damages in an amount to be proven at trial but estimated to be not less than the more than \$700,000 in fines and penalties imposed against Marcus & Millichap as part of Defendants' illegal scheme as well as the hundreds of thousands of dollars in attorneys' fees and costs incurred by Marcus & Millichap—for itself and on behalf of its Brokers—fighting and defending against the Defendants' scheme;

7. For monetary damages in an amount to be proven at trial but equal to the Plaintiffs' consequential damages, including but not limited to lost profits and business opportunities including (i) lost profits and opportunities resulting from the significant and burdensome time Marcus and its Brokers have been compelled to devote to fighting against the Defendants' illegal scheme, and (ii) lost profits and opportunities resulting from Plaintiffs not being allowed to do business in Nevada without being subject to the Defendants' illegal scheme;

8. For disgorgement of all proceeds received by each of the Defendants as a result of their illegal restraints on trade, including but not limited to commissions they received in the course of their business(es) that might have gone to any out-of-state broker had the out-of-state broker been permitted to do business in this state without the Defendants' illegal scheme;

9. For an award of treble damages as permitted by law;

10. For an award of punitive damages as permitted by law;

11. For pre- and post-judgment interest, attorneys' fees and costs, as permitted by law; and

12. For such other and further relief as the Court deems just and equitable.

JURY DEMAND

Marcus & Millichap hereby demands trial by jury on all matters so triable.

DATED this 21st day of December, 2018.

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⁶ For purposes of identification only.
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